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WHETHER A GIFT CAUSA MORTIS CAN BE MADE IN CONTEMPLATION OF SUICIDE.

So many unusual and unsuspected subjects of inquiry arise to confront the modern practitioner of law, that it is not a matter of surprise that many of the most illustrious and accomplished members of the profession state emphatically that it is impossible to know the law or even a fraction of the rules for applying its various principles to the illimitable variation of circumstances that is possible under our complex civilization.

One of these "unusual questions" is suggested by the recent case of Duryea v. Harvey (Mass.), 67 N. E. Rep. 351. This case, while not at all deciding the point, suggests the query whether a gift *causa mortis* is valid if made in contemplation of suicide. The case cited was one in which the alleged donor of a gift *causa mortis* did in fact commit suicide, but the point on which the case was really decided was that there was an insufficient delivery to the donee to constitute the transaction a gift *causa mortis*. The court said in speaking of the effect of suicide: "In view of the want of delivery necessary to create a gift *causa mortis*, it becomes unnecessary to consider whether the objection that such a gift cannot be made in contemplation of suicide, is well founded."

Fortunately there is one well considered case on this exact question, which in more than one respect will repay careful study. Agnew v. Belfast Banking Company (1896), 2 Irish Rep. 204. In this case the owner of a deposit receipt gave the document to her sister in contemplation of death, which was to be effected by suicide, and was to take effect only in the event of the donor's death. The evidence showed the donor was afraid of her husband. The court held the gift invalid on the ground that a gift in contemplation of suicide did not constitute a valid *donatio causa mortis*. The discussion of the questions involved in this case consume 21 pages of the volume in which it reported, and is handled with that consummate skill and with that regard for ancient precedents and learning, which is so characteristic of the decisions of appellate tribunals in Great Britain.

Since the rules governing gifts *causa mortis* were derived from the civil law, to that source must we first look for a solution of this question. Justinian says as to the motive of such gift, "*quae propter mortis fit suspicionem*,"—in other words, gifts made in apprehension of death. "These words" says Walker, C., in the case we have cited, "seem inapplicable to one who does not apprehend death, but voluntarily seeks it." These words of Justinian also imply an essential element of a gift *causa mortis*, *i. e.*, that if the doner recover, the gift is at an end, and the right to possess the thing given reverts to him. In the case of intentional suicide this is utterly impossible. Again referring to Justinian it is important to note the relation of the words denominating this transaction, *donatio mortis causa*. In relation to this point Porter, M. R., very happily remarks: "The donor dreaded the loss of all her money [by her husband's profligacy], and probably knew nothing of the law which gave her the control of her own. Thinking there was no other way of placing it beyond her husband's reach, she determined to give it to her sister, and then destroy herself. This was not a *donatio mortis causa* but *mors donationis causa*. She did not give the money because she was dying, but died because she wanted to give the money." Fitzgibbon, L. J., speaks on still another phase of the Justinian Code: "The Civilians expressly lay down that a *donatio mortis causa* is not a gift until the death of the doner." The learned Lord Justice then quotes in latin and translates a passage from the Pandects as follows: "The motive of a gift *inter vivos* is that the person to whom it is given should have and keep it, but the motive of a *donatio mortis causa* is to let it take effect only when self interest is at an end, and in this case the desire to retain the object through the love of life, is still stronger than the desire to give it to the donee." Could words be used more graphically inapplicable to the state of mind of a person intending to commit suicide?

Leaving now the consideration of the question, in the light of its civil law origin, we shall turn our attention to the more general and all-comprehensive Anglo-Saxon ground

of *public policy*. Walker, Ch., thus expressed himself: "I think that a gift is utterly void as against public policy which is to take effect on, and not until the commission of a felony by the giver, and that felony of the highest form; for we know the terrible consequences which English law imposed on a *felo de se*. If this had been a bond reciting the contemplation of suicide, and making the £200 payable on the obligor committing suicide, could his executors have been sued on it?" But the learned Master of the Rolls, Mr. Porter, in our mind, more accurately expresses the rule, and the reason for it, as follows: "There are many other acts *inter vivos*, the legal validity of which depends upon the existence of a particular, mental condition or intention, but none in which the connection between the act and the intent is more absolutely indissoluble than in the case of a *donatio mortis causa*. Now, can it be the law that an act absolutely depending on intention can be valid, when the intention consists of a design to commit a felony? A *donatio mortis causa* is incomplete till death, and depends upon it. If the sick man recovers, it is of no avail. No property passes until death. In the case of a felonious suicide, therefore, the accrual of the right depends upon the committal of a felony; and the intent to commit that felony is a necessary constituent of the gift. In my opinion, it is fundamentally opposed to the first principles of our law, or of any law which treats suicide as a crime, that legal rights should be created by the intention to commit suicide to be followed by the actual commission of it." This language is concurred in by all the other judges.

There is one phase of this question left undecided. Suppose the gift was made in apprehension of an impending attack of suicidal mania. The court, in the case we have just considered, said: "We have all disclaimed the intention of deciding anything as to the possible case of a donation made in sane apprehension of an impending attack of suicidal mania, regarded as an imminent cause of impending death, which, in such a case, might be treated as a natural death by disease." Having in mind the position of the courts as to the effect of suicide, while insane, on a policy of insurance, we should be inclined to think that in the case of a gift by one visited by periodical attacks of a suicidal mania, in contemplation of death from an attack of such a nature, which, at any time, he might deem to be impending, would fulfill all the requisites of a valid gift *mortis causa*, and would violate no possible rule of public policy.

NOTES OF IMPORTANT DECISIONS.

INSANE PERSONS — OPINIONS OF LAY WITNESSES TO PROVE INSANITY.—The rule as to the competency of the opinion of lay witnesses in proving insanity has been much discussed with varying results. A recent opinion of the United States Supreme Court in Queenan v. Territory of Oklahoma, (decided June 1, 1903, not as yet reported), contains a very clear expression of what the rule ought to be and its application, to various states of facts. The question being one that not infrequenty arises, a knowledge of this authorative expression of the true rule in such cases could not be without value to all students and practitioners of the law. Justice Holmes says:

"The only defense was insanity. A lawyer, called as a witness for the defendant, stated that he knew the prisoner quite well; that the prisoner was his barber for some years. and that he saw him on the day before the killing. He then described the appearance and conduct of the prisoner, and said that at the time he did not notice any difference from the prisoner's usual demeanor. He then was asked if since the killing he had formed an opinion as to the prisoner's mental condition at the time. This opinion he was not allowed to state, and this is alleged as error. It will be seen that the witness was allowed to sum up his impressions received at the time. The court said, in terms, that he might state any condition that existed then or any impression that it made upon the witness' mind as to the prisoner's condition. That is all that was decided in Connecticut, Mut. Life Ins. Co., v. Lothrop, 111 U. S., 612. Some states exclude such opinions, even when formed at the time. But, as is pointed out in the case cited, it is impossible for a witness to reproduce all the minute details which he saw and heard, and most witnesses make but a meagre and halting effort. Therefore, in this, as in many other instances, after stating such paritculars as he can remember, generally only the more striking facts, an ordinary witness is permitted to sum up the total remembered and unremembered impressions of the senses by stating the opinion which they produced. To allow less may deprive a party of important and valuable evidence that can be got at in no other way. But, on the other hand, to allow more, to let a witness who is not an expert state an opinion upon sanity which he has formed after the event, when a case has arisen and become a matter of public discussion, must be justi-

fied, if at all, on other grounds. It is unnecessary to lay down the rule that it never can be done, for instance, when the opinion clearly appears to sum up a series of impressions received at different times. Hathway v. Nat. Life Ins. Co., 48 Vt., 335, 350. It is enough to say that, at least, it should be done with caution and not without special reasons. In this case the only knowledge shown by the witness was the familiarity of a man with his barber. So far as the evidence went, his present opinion might have been the result of interested argument, and, leaving such suggestions on one side, no reason of necessity of propriety was shown for the statement that would not have applied to any other man who had had his hair cut in the prisoner's shop. It does not appear that there was error in the ruling of the court."

COMMERCE—TAXATION OF GROSS EARNINGS OF ELEVATOR WAREHOUSE AS AN INTERFERENCE WITH INTERSTATE COMMERCE.—The Munn Case seems to be a bone of contention which many state courts delight to attack occassionally and express grave and learned doubts as to its correctness as an authority. The appellate division of the New York Supreme Court has added the latest note of dissent. In the recent case of People v. Miller, 82 N. Y. Supp. 582, the court held that a domestic railroad corporation owning land within the state, upon which it has a grain elevator and freight warehouse, and several lines of railroad tracks to afford access to the buildings, but which own no rolling stock, its entire business consisting in loading, unloading, and storing grain and other freight in process of interstate transportation, which it receives from other companies, is liable to a gross earnings tax on its franchise under a statute taxing railroad companies, it not being engaged in interstate commerce within the provisions of the federal constitution, vesting the regulation of interstate commerce in congress. The court expressed its opinion as follows: "Taking the Munn Case as an authority, it would appear reasonable to say that, while the business of the relator was incidently connected with interstate commerce, yet its business is not of itself such commerce. It simply performs services all within this state, with the facilities which it has, upon the employment of companies engaged in commerce between the states. Suppose it owned the docks where the boats from the lakes tied up and discharged their freights before being transferred to other carriers, would the charges for wharfage be earnings from interstate commerce? Or, if it owned trucks which were employed in carting interstate freights from one dock to another while in transit, or from the terminals of one transportation company to the terminal of another, both in the state, would its charges for such services be such earnings? It seems not, if the Munn Case is to be regarded as an authority. Yet the services which it renders are of a kindred character to those mentioned. I have grave doubts as to the correctness of this conclusion, yet, as the United States Supreme Court is the final arbiter upon a question, such as is presented here, until that court departs from the doctrine laid down in the Munn Case I think it should be followed by us."

With all this barking of state tribunals and learned criticisms by prominent lawyers at bar association meetings, the Supreme Court seems to be not at all disturbed. It even delights in driving the nail in deeper. Thus in the recent case of Budd v. New York, 143 U. S. 517, 12 Sup. Ct. Rep. 36 L. Ed. 247, the cases where the Munn Case had been commented upon were reviewed, and the doctrine of that case was adhered to. It is true that in the Budd Case the right to fix maximum charges by public elevator warehouses was put upon the ground that legislation fixing such charges was a valid exercise of the police power of the state, and no such questtion is involved in the case at bar, yet the other question involved in the Munn Case, *i. e.*, as to the character of such warehouses as related to interstate commerce, was referred to, and no dissent from the doctrine of that case in that respect is to be found in the prevailing opinion.

BANKRUPTCY — DISCHARGE AS AFFECTING A JUDGMENT IN BASTARDY. — The recent case of McKittrick v. Cahoon (Minn.), 95 N. W. Rep. 223, discusses a very interesting and important question under the new bankrupt act, whether a judgment in bastardy is affected by a discharge in bankruptcy. The court held that where an order in bastardy proceedings the putative father of a natural child was required to pay a monthly stipend for its support, and upon refusal a final money judgment was obtained for the total amount due, the rights of the person entitled to recover under the order of filiation were merged in the judgment, and the debt evidenced thereby was not excepted from the operation of the Bankruptcy Act of 1898. The court said: "The learned trial court was of the opinion that this judgment, upon the grounds of public policy and just necessity, retained all the legal attributes of the original order for maintenance, and thereupon was not provable in the bankruptcy court. Undoubtedly the authorities justify the view that an original order for the support of an illegitimate child will not be discharged in bankruptcy proceedings. There are likewise authorities that hold that orders for alimony would not be excepted from a discharge in bankruptcy. Brandenberg on Bankruptcy, ch. 4, § 4, notes; *In re* Baker (D. C.), 96 Fed. Rep. 954; *In re* Hubbard (D. C.), 98 Fed. Rep. 710; Hawes v. Cooksey, 13 Ohio, 242, Andubon v. Shufeldt, 181 U. S. 575, 21 Sup. Ct. Rep. 735, 48 L. Ed. 1009. These decisions are placed upon the ground that such claims are uncertain, and of the nature of police regulations, involving the authority of courts to enforce their orders for the protection of public welfare and good government; but the question here is of a

different character, and must be controlled by the express terms of the bankruptcy act in force at the time of defendant's discharge. The only exceptions to relief from the obligations of claims as therein recognized were, first, taxes; second, judgments for fraud, false pretenses, willful and malicious injuries to personal property; third, those not scheduled in time for allowance; and fourth, results of fraud, embezzlement, misappropriation, or defalcation in office or in a fiduciary capacity. National Bankr. Act 1898, § 17, Act July 1, 1898, ch. 541, 30 Stat. 550, 551, U. S. Comp. St. 1901, p. 3428. It seems very clear that the final judgment in this case does not fall within either of these exceptions, and it is also equally clear that, by securing the judgment, plaintiff acquired valuable and substantial rights in having it doeketed, which would make it a lien upon real estate—the right to have supplemental proceedings or maintain a creditors' suit, with other privileges incident only to the highest obligation which the law recognizes—but there are no processes, and there could be none, upon constitutional grounds, in this state, by which a judgment for money only could be enforced by imprisonment, even though the judgment is rendered for amounts due on an order of filiation, which fixes the nature of the obligation without reference to the character of the claim upon which it is founded. After the judgment, obviously, there cannot be two distinct claims; and sound policy has led to the adoption of the rule that, where a precedent liability is made the basis of a final money judgment, the rights of the parties are merged in what the law treats as the higher obligation. Freeman on Judgments, §§ 215-217. In the application of this principle to the question presented here, it must be held that by obtaining the judgment the plaintiff elected to stand thereon alone, with all the rights acquired thereby, and subject to all the burdens which insolvency and bankruptcy laws may impose. Therefore the plaintiff, by putting her floating claims into judgment, established a debt of a different nature in material respects, and of a character that subjects it to bankruptcy supervision."

Whether such a judgment would be excepted from the discharge in bankruptcy by the amendment to subdivision 2 of section 17 of the Bankruptcy Act of 1893, in a more doubtful question. By this amendment the following additional debts are excepted from a discharge: "or for alimony due to or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female or for criminal conversation." Our personal opinion is that the amendment would include a judgment in bastardy.

AN ACTION FOR MENTAL SUFFERING ALONE, UNACCOMPANIED BY PHYSICAL INJURY, WILL LIE AGAINST A TELEGRAPH COMPANY WHEN THE MENTAL SUFFERING IS MADE THE FOUNDATION OF THE ACTION, AND THE DAMAGES TREATED AS ACTUAL OR COMPENSATORY.

On entering upon the discussion of this important question over which there is such a diversity of judicial opinion, we desire to inquire into the legal relationship of the telegraph company to the sendee and to the public.

The legal *status* of a telegraph company is that of a common carrier of messages, bound to serve the public with impartiality, and liable for losses caused by their negligence, or willful default.[1] Some of the earlier cases held telegraph companies liable as insurers, the same as common carriers of freight, but this is not the true rule.[2]

The telegraph company owes an active duty to deliver the message in writing to the addressee within as reasonable time as practicable. What would be negligence or willful indifference in the delivery, must depend upon the facts of each case.[3] It will not be denied that the telegraph company violates this duty which it owes to the sendee and the public by a failure to deliver, within a reasonable time, messages announcing death, etc. But the contention is, "that where only mental suffering is the result of the wrong, then there can be no recovery in damages for mental suffering unaccompanied by physical injury."

When this salutary rule of the common law was established, telegraphy was unknown to the world, and the conditions under which it is being exploited, by common carriers under charters with large franchises, constantly extending a business that earns fabulous profits until its use has become as universal and common as the postal service, makes the question here under consideration "*sui generis*." It is a boast of the common law that it affords a

[1] 25 Ency. Law, 747, note 4: 779; Gillis v. Western Union Tel. Co., 15 Am. St. Rep. 917; Budd v. New York, 143 U. S. 517; Western Union Tel. Co. v. Reynolds, 46 Am. St. Rep. 715; Gray on Telegraphy, 8, 11, 45; Joyce on Electric Law, 19, 24, 14, and note 14 on pp. 20-26.

[2] Gray on Telegraphy, 6, 7; Parks v. Alto Tel. Co., 73 Am. Dec. 589.

[3] 25 Ency. Law, 780-2B; Western Union Tel. Co. v. Henderson, 18 Am. St. Rep. 148.

remedy for every wrong, and that its principles are so universal and elastic as to be readily applied to new conditions and new facts.

Let us look at the question now from a contractual viewpoint. For while I have little patience with the refinement of those courts which would rest the decision of so important a question upon the character of an action brought, yet there are certain settled principles which distinguish rights arising *ex contractu* from those *ex delicto*, and which, if observed, will throw light on this much vexed question. One of these principles is, that inasmuch as contracts generally deal alone with pecuniary benefits, only a pecuniary standard of damages could be applied for the breach of contracts. And this rule is seized upon to exclude damages for mental suffering when it arises from breach of contract and the contract is appealed to, because there is no pecuniary standard by which mental suffering can be measured. This, of course, is misleading, for the contract need only be appealed to for purpose of showing the relationship and *status* of the parties. And the misconception is still greater when you seek to apply this rule to a contract which never sought to deal with pecuniary benefits, but with feelings alone.[4]

What earthly analogy has the subject matter of a contract, which deals only with feeling, to that of a contract which deals exclusively with pecuniary benefits. This difference between the subject matter of the two classes of contracts is of the utmost importance, and must be remembered and observed if we are to reach a correct conclusion. The subject matter of the contract in this class of cases then, *is feeling, sentiment*. The telegraph company is a public carrier of intelligence, and a large class of intelligence they daily transmit consists in messages of sickness, death, etc. They know when such a message is accepted for transmission and delivery, that there is no pecuniary standard by which its value can be ascertained; then there is no escape from the conclusion that it is within the contemplation of the parties that for a breach, the damage will be ascertained by means other than the pecuniary standard. Otherwise, what power could require them to observe such contracts? The citizen would be entirely at their mercy; and that too in matters of greatest importance touching such service. While on the other hand, if required to compensate the injured party for his mental suffering, it would speedily put a stop to the intolerable litigation which so concerns some of the courts. For the telegraph company would see that such messages were transmitted and delivered within a reasonable time, etc.

There is another misconception as to the character of such damages for mental suffering alone, which has led to much of the confusion that surrounds the discussion of this question by the courts. They want to make it depend upon the right to recover actual or nominal damages, and then include the mental suffering as matter of aggravation; or, in other words, they want to assign to it the character of vindictive or exemplary damages, while it should be treated as compensation.[5] We call especial attention here to the recent article of Mr. G. C. Hamilton in Vol. 52, pp. 126-9 of THE CENTRAL LAW JOURNAL in which he ably discusses this question of mental-suffering-damages from the view of point of compensation. When treated as compensatory damages, the same general rule announced in the case of Hadley v. Baxendale, 9 Exc. 341 will apply, viz.: "Only such damages as are the proximate consequence of the injury and within the contemplation of the parties," can be recovered.[6]

But it is only necessary that the negligence of a telegraph company be the efficient cause of the injury. The fact that some other cause operates with the negligence of the telegraph company in producing the injury, does not relieve the defendant from liability.[7] Both the North Carolina and Mississippi cases (*supra*), were cases of combined and concurrent causes. In the North Carolina case, the court said: "It was a question for the jury to decide, under charges from the court, whether the suffering and danger from child birth was the proximate cause of the injury or the mental suffering on

[4] 1 Sutherland on Damages, 92.

[5] Larson v. Chase (Minn.), 50 N. W. Rep. 239.

[6] 25 Ency. Law, 836-7; Clifton v. Western Union Tel. Co., 68 Mo. 307; McBride v. Tel. Co., 96 Fed. Rep. 81; Western Union Tel. Co. v. Hall, 124 U. S. 444.

[7] 16 Am. Ency. Law, 440-1, and note; Thompson v. Tel. Co., 11 S. E. Rep. 269; Hearn v. McCaughan, 82 Mo. 22, 48-57.

account of the absence of the husband," caused by the failure to deliver the telegram. In the Mississippi case the court sustained a verdict of $2,050.00 which held that the failure of the boat to stop at the landing was the proximate cause of the injury, and not the delicate and enfeebled condition of the wife.[8] Where the message itself is evidence of its importance and announces "the death, etc.," it is not necessary that it should reveal the kinship of the addressee to the deceased.[9]

The suit is not for the death of the relative or friend, but for the disappointment and mental anguish in not being permitted to see him in death, and of being deprived of the privilege of paying our respect and love to his memory by attending his funeral obsequies. This is a natural feeling in the heart of every loving wife, relative and friend, and it is this natural feeling the defendant company outrages by violating its contract. Its negligence in failing to deliver the telegram within a reasonable time alone causes this mental suffering. That the telegram announces a fact that brings great sorrow to plaintiff cannot affect the damage sought to be recovered. It was the defendants contractual duty to have ameliorated that sorrow; instead of which it wrongfully did that which aggravated the sorrow. It was bad enough, and sad enough at most; but the telegraph company by its wrong, makes it many times worse. It is not difficult to disassociate the two feelings, and the jury can be instructed not to take into account the mental sorrow caused by the death of the relative or friend. Let us examine the question now on principles controlling in actions *ex delicto*. The telegraph company is a common carrier of intelligence, and owes a general duty, under the law, to both the sender and sendee to transmit and deliver its messages within a reasonable time. A large class of its business consists in forwarding messages of a social character, of sickness, death, etc. These messages, of all others, are most urgent and important. It deals alone with the feelings, the sentiment, the mental side of its patrons. The telegrams on their face give the defendant company notice of their urgency, their supreme importance, and the character of the suoject matter they are called on to deal with. They are chargeable with the knowledge that no pecuniary benefits are within the contemplation of the parties; that no pecuniary standard can be appealed to in measuring the damage that will be inflicted by a negligent failure to discharge their duty. They are given great powers and privileges under their charters, and make fabulous profits out of this class of their business. They hold themselves out to the world that they will transmit and deliver these messages of sickness, death, etc., within a reasonable time, as the business of telegraphy will permit. The contract made with its patrons may be appealed to for purpose of showing the legal relation and *status* the telegraph company may bear to either the sender or sendee. To show whether either has a right of action for any damage caused from its negligence, to show any aggravating circumstances that may exist that would prove the negligence was prompted by malice, wilfullness, or wantoness. There are no such rules or limitations on the admeasurement of damages in action *Ex Delicto* as arises out of the contract, *i. e.*: "That only such damages can be allowed for the breach of contract as may be measured by a pecuniary standard." "That exemplary or vindictive damages are never allowed for breach of contract."

Those courts which hold that there can be no recovery for mental suffering alone, unaccompanied with physical injury, invoke these limitations on the measure of damage when the contract is referred to or appealed to in actions *ex delicto*. But we submit we have the legal right to look to the contract for the purpose of showing the legal relationship, and any aggravating circumstance that would show malice, etc. And that on principle the question when viewed simply as a tort, cannot be fettered by any of these rules limiting the law of damage when the contract is relied upon.

Here then are new conditions, new facts, growing out of telegraphy, unknown to the common law. Here it is conceded that a wrong has been done the plaintiff, that the telegraph company has violated its general duty as a common carrier of intelligence; that the plaintiff has sustained an injury, and that if the common law rule invoked here, touching mental suffering be applied, there is no

[8] 25 Ency. Law, 862, 864, and cases cited in note 1.

[9] 25 Ency. Law, 845-6, note 3; Joyce on Electric Law, 800-1, 804; Western Union Tel. Co. v. Rosentreter, 16 S. W. Rep. 25.

remedy. In the face now of the frequent application of that principle of the common law, which has been its glory in all ages, that by reason of its universality and elasticity, no breach of a plaintiff's legal right can go without a remedy, doesn't it seem puerile in the courts to say in so important a case as this, that we are helpless because mental suffering cannot be measured by a pecuniary standard. To say that the suffering of the human mind, the best and grandest part in the trinity of man, is so vague, shadowy and uncertain of admeasurement that we will not undertake it. And that too when the books are full of cases in which mental suffering has been the true graverman of the action, although the courts rest the action on a fiction, and when it has been satisfactorily measured by the juries, without applying the pecuniary standard. Or to say, that as courts we will not meet this responsibility of seeing a wrong righted, because it will result in importuning us too often with intolerable litigation.

With this kind of case before us let us see now, on principles as hoary as the rule invoked here, what is the law of tort, and what is the law of damages applicable to this wrong? The act complained of is negligence in the failure to deliver, say a telegram, within a reasonable time, as required by a general duty owed the plaintiff. The telegraph company is engaged in a business sanctioned by law to promptly transmit and deliver messages relating to deaths, etc. It undertakes this duty and negligently fails to discharge it. Here is the wrong; here is the breach of the plaintiff's legal right; and the negligence complained of is the proximate, efficient cause of the violation of plaintiff's legal right. The subject matter dealt with is feeling; the injury inflicted is mental suffering. If the act complained of be the proximate cause of the injury of the mental suffering, and violates some legal right of the plaintiff, then the damages for the mental injury inflicted are compensatory.[10] That the act complained of violates a legal right of plaintiff, I quote from Judge Lumpkins in Chapman v. Western Union Telegraph Company,[11] most relied on as the leading case against our contention here: "That the argument that the telegraph company undertakes to serve the feelings of their customers is unanswerable, so far as it proves a right of action arising out of a breach of duty."

The wrongful act must not only give the cause of action, but it must also be the efficient and proximate cause of the mental suffering.[12] The same negligent act here that caused the wrong, that violated plaintiff's legal right, was also the proximate, efficient cause of the injury. The mental suffering inflicted was the proximate result of the wrong complained of, and the injury was within the contemplation of the parties at the time service was undertaken. The mental suffering thus caused by simple negligence, falls directly within the principles of the old English case of Hadley v. Baxendale, and alone constitutes an independant cause of action. Now, if on principle, mental suffering alone, independant of physical injury or nominal damages, be the proximate result of the wrong complained of, then *a fortiorari*, the measure of damage must be compensatory instead of exemplary or punitive in such case. In all actions for physical iujury, and in actions where exemplary or punitive damages were allowed, mental suffering has been admitted in aggravation of damages. It could only be put in evidence in cases where punitive damages were allowed. It has never been made a substantive cause of action. But like the case of seduction, the graverman of which is loss of services, mental suffering has been tacked on to physical injury or nominal damage of a pecuniary nature, and it is in this respect that the subject matter now before us is *sui generis*. And many of the courts that have admitted mental suffering alone as an element of damage, have felt constrained to admit it as punitive damages, or as in aggravation of damages. Thus making the graverman of the complaint nominal damages growing out of the breach of the contract, in order that the pecuniary staudard of admeasurement might be first applied, thinking thus to avoid the difficulty of applying another rule of admeasurement. And although the proper results have been reached in these cases, we think they have beclouded the consideration of this question by putting the right of recovery on false

[10] Reese v. Western Union Tel. Co., 24 N. E. Rep. 163; Mentzer v. Western Union Tel. Co., 62 N. W. Rep. 1; Chapman v. Western Union Tel. Co., 13 S. W. Rep. 880; Larson v. Chase, 50 N. W. Rep. 239.

[11] 15 S. E. Rep. 902.

[12] Woods' Mayne on Damages, 75.

grounds. The common law in keeping apace with these new conditions and facts arising out of telegraphy should apply these settled principles by making mental suffering the graverman of the action. Then when the same act which commits the wrong, also inflicts the injury to the mentality, the true rule of the measure of damages is compensation. And when you apply the rule of compensation, then this law of tort and the law of damage is symmetrically developed on well settled principles to meet new conditions and new facts.

The following states refuse to allow damages for mental suffering, when unaccompanied with physical injury, to-wit: Arkansas, Dakota, Florida, Georgia, Illinois, Minnesota, Mississippi, Missouri, New York, Ohio, Oklahoma and Wisconsin.[13] While the following states allow mental suffering unaccompanied with physical injury, to-wit: Alabama, Illinois, Indiana, Iowa, Kansas, Kentucky, North Carolina, Tennessee, Texas and Minnesota.[14] The following text writers also allow damages for mental suffeting unaccompanied by physical injury.[15] And Woods Mayne on damages, p. 75, says, that if the courts would treat mental suffering as compensatory damage instead of vindictive, then it would alone constitute an independant cause of action. An examination of the Dakota, Florida, Missouri, Georgia, Minnesota, Oklahoma, Wisconsin and Mississippi cases will show that the judges refusing to allow mental suffering alone treat it as exemplary, punitive damages, dependant upon some other cause of action. And while Alabama and Tennessee do the same, yet they arrive at a correct result.

Justice Mabry, in a dissenting opinion in Int. Tel. Co. v. Saunders,[16] second column, "says that there can be no question that the failure to deliver a telegram can directly cause substantive injury and damage to the mind." And Judge Cooper in the Rodgers Case[17] in order to maintain his position, was forced to criticise those courts which held that damages for mental suffering in breach of promise cases were compensatory. He claimed they should be punitive. Judge Lumpkin is confronted with the case of Coleman v. Allen,[18] in which his own court says that in "an action for false imprisonment or malicious prosecution, mental suffering was a proper subject for compensatory damages" In the technical action of assault, where no physical injury is inflicted, many of the courts give damages for mental suffering alone. Thus making it the foundation of the action, and the damages growing out of the injury compensatory. The same may be said of the actions of slander, libel and seduction; for the fiction introduced to support these actions, do not take them out of the principle we are here contending for. The Minnesota courts are confronted with the case of Purcell v. Ry. Co.,[19] where fright, unaccompanied with physical injury, unless the illness which followed can be so denominated, was made the foundation of the action and compensatory damages given. But the Minnesota court has put itself on both sides of this question, the reasoning though in Larson v. Chase,[20] is unanswerable.

We gather from this examination of the precedents, that fully one-half of the courts, which have passed on the question, have misconceived it in refusing to recognize such damages as actual, to be measured by the

[13] Joyce on Electric Law, 828; Play v. Western Union Tel. Co., 43 S. W. Rep. 965; Russell v. Western Union Tel. Co., 19 N. W. Rep. 408; Int. O. Tel. Co. v. Saunders, 14 So. Rep. 148; Chapman v. Western Union Tel. Co., 15 S. E. Rep. 901; Francis v. Western Union Tel. Co., 59 N. W. Rep. 1078; Western Union Tel. Co. v. Rodgers, 9 So. Rep. 823; Connell v. Western Union Tel. Co., 22 S. W. Rep. 345; Curtin v. Western Union Tel. Co., 42 N. Y. Supp. 1109; Butner v. Western Union Tel. Co., 37 Pac. Rep. 1087; Summerford v. Western Union Tel. Co., 57 N. W. Rep. 973. And some three or four federal courts, sitting in one of the above states, and which following the doctrine of that particular state, refused to allow damages for mental suffering alone.

[14] Western Union Tel. Co. v. Adair, 22 So. Rep. 73, and other cases from Alabama cited in this brief *supra*. Logan v. Tel. Co., 84 Ill. 468; Reese v. Western Union Tel. Co., 24 N. E. Rep. 163; Mintzer v. Western Union Tel. Co., 62 N. W. Rep. 1; Western Union Tel. Co. v. McCall, 58 Pac. Rep. 797; Western Union Tel. Co. v. Fisher, 54 S. W. Rep. 830; Landie v. Western Union Tel. Co., 32 S. E. Rep. 886; Woodsworth v. Western Union Tel. Co., 8 S. W. Rep. 574; Stuart v. Western Union Tel. Co., 18 S. W. Rep. 351; Beasley v. Western Union Tel. Co., 39 Fed. Rep. 181; Western Union Tel. Co. v. McCall, 58 Pac. Rep. 797; Joyce on Electric Law, 827; Larson v. Chase, 50 N. W. Rep. 238.

[15] Joyce on Electric Law, 830; 2 Sherman on Negligence, 605. 756; Thompson on Electricity, 378-9; 2 Sherman on Damages, 605, 756; 3 Sutherland on Damages, 975-80; 2 Sedgewick on Damages, 894.

[16] 14 So. Rep. 153.

[17] 9 So. Rep. 823.

[18] 5 S. E. Rep. 204.

[19] 50 N. W. Rep. 1034.

[20] 50 N. W. Rep. 23.

rule of compensation; and this misconception grows out of the failure to recognize that mental suffering alone can be made the foundation of an action for damages in this class of cases. We, therefore, submit that on principle, in this class of cases mental-suffering-damages should be allowed whether the action be *ex contractu* or *ex delicto*, and that the Texas doctrine is the true doctrine, and will finally, in the development of the common law to new facts and conditions, prevail.[21]

Mr. Joyce in his new work on Electric Law agrees with Sherman and Redfield, Sutherland, Sedgewick, Lawson and Thompson in the conclusion that in the class of cases under consideration, mental suffering alone does constitute the basis of an action for damages.[22] And shows that when the federal court first applied the contrary rule, or rather the old common law rule, which required that mental suffering must be connected with physical injury, it was because it happened to be the law of the state from which the case originated.[23]

W. H. CLIFTON.

[21] Joyce on Electric Law, 827.
[22] Joyce on Electric Law, 829, 830.
[23] Beasley v. Western Union Tel. Co., 39 Fed. Rep. 182; Joyce on Electric Law, 828, note 8.

COPYRIGHT—APPROPRIATION OF AUTHORITIES CITED IN LEGAL ENCYCLOPAEDIA AS AN INFRINGEMENT.

THE EDWARD THOMPSON COMPANY v. THE AMERICAN LAW BOOK COMPANY.

United States Circuit Court of Appeals, for the Second Circuit, June, 1903.

A copyrighted law book is not infringed by a subsequent work on the same subject, where the only accusation against the second author is that he collected all available citations, including those found in the copyrighted work, and, after examining them, used those which he considered applicable to his text.

COXE, J.: The complainant is the publisher of two encyclopædias; one of American and English law, the other of pleading and practice. The defendant is compiling a work called the "Cyclopedia of Law and Procedure," two volumes of which were published when this action was commenced in December, 1901. The complainant alleges that these volumes infringe its copyrights.

The method adopted by the complainant in preparing the articles for its books was, briefly stated, as follows: When a topic was assigned to a writer, paragraphs cut from the United States Digest, the American Digest and Jacob Fisher's Digest bearing upon the subject in question were placed in his hands. In this way the writer, without any labor on his part, mental or physical, had before him, not only the authorities collected by others, but also the pargraphs written by others, which were used by him in preparing his article. It is alleged by the defendant that all of the digests thus used were copyrighted and that the copyrights were infringed by the complainant's verbatim appropriation of a large number of these paragraphs, and that, in any event, having adopted the same method which it now denounces as piratical, the complainant is not entitled to equitable relief. The defendant's method was similar to that of the complainant except that it obtained from the owners of the copyrighted digests the right to use these works. The only act of the defendant which is complained of is this: Lists of the all cases bearing upon a given subject, including the cases found in complainant's books, were put in the hands of the editor chosen to develop that subject. The list of complainant's cases contained authorities not found in the digests. The original reports of these cases were examined by the editor, and, if the cases were found applicable, they were cited by him in support of his article, if not, they were rejected. There is no pretense that a word of the complainant's text has been copied; in fact the defendant's editors were not permitted to open the complainant's books. The list of cases furnished the editor was not copied in the defendant's work, and the only use made of the list was as a guide to the volumes where the cases were reported.

Briefly stated, then, the question is this: Is a copyrighted law book infringed by a subsequent work on the same subject where the only accusation against the second author is that he collected all available citations, including those found in the copyrighted work, and, after examining them in text books and reports, used those which he considered applicable to support his own original text? We are of the opinion that this question must be answered in the negative.

The doctrine contended for by the complainant extends the law of copyright beyond its present bounds and if pushed to its logical conclusion will inflict a far greater injury upon literature than it can ever expect to prevent. If it be held that an author cannot consult the authorities collected by his predecessors the law of copyright, enacted to promote the progress of science and useful arts, will retard that progress.

It will be found upon examining the reported cases that there has been a finding of noninfringement unless it appears that the whole or a part of the copyrighted work has been copied either *in haec verba* or by colorable variation. In Pike v. Nichols, L. R. 5 Chancery Appeal, 263, it was held that the defendant was not permitted to copy a passage from another author directly from the plaintiff's work, "but having been put on the track, and having looked at that particular part of the book which the plaintiff led him to, he was entitled to make use of every passage from that author which the plaintiff had made

use of." In Morris v. Wright, L. R. 5 Chancery Appeal, 287, it was decided that if the defendant "used the plaintiff's book in order to guide himself to the persons on whom it would be worth his while to call, and for no other purpose, he made a perfectly legitimate use of the plaintiff's book." In the case of Moffatt v. Gill, 86 Law Times Rep. 465, which the complainant quotes with approval, infringement was found because it was abundantly shown that "not only have the quotations in substance been taken, but the letterpress connecting them has also in substance been taken in a great many instances and particularly in the character sketches." The court, however, expressly recognizes the right of a subsequent author to do what the defendant in the case at bar has done. In speaking of the cases relating to directories the court say: "You cannot, where another man has compiled a directory, simply take his sheets and reprint them in your own. You are entitled, taking the sheets with you, to go and see whether the existing facts concur with description in the sheets, and if you do that you may publish the result as your own." To the same effect is List Pub. Co. v. Keller, 30 Fed. Rep. 772; Jarrold v. Houlston, 3 Kay & J., 708; Simms v. Stanton, 75 Fed. Rep. 6; MacGidlivary on Copyright, 103; Medd v. West Pub. Co., 80 Fed. Rep. 380.

Counsel for complainant in order to illustrate their position put the following question: "Suppose the author of a dictionary of quotations inserts after each quotation, as is customary, the book and page of the original author, will it be contended that the compiler of a subsequent book of quotations could have his clerk copy a list of all the references contained in the first author's book without copying the quotations and could then go to the original authors and copy the quotations found at the pages indicated by the references? Yet he would have an undoubted right to do this if the contention in the appellant's brief is sound?" Assuming that the question is answered in the negative we do not think the conclusion follows. It may very well be that the second compiler would not be permitted to copy the quotations and for the reasons suggested by Lord Collins in Moffatt and Gill, *supra*. He says: "That (the defendant's contention) leaves out the whole merit, the felicity of the quotation; its adabtibility to a particular end; its illustration of a particular characteristic. All these things enter into the choice of one quotation as apart from another. That is a process which may involve gifts both of knowledge and intelligence."

The difficulty with the counsel's hypothesis is that the case stated is not the case made by the proofs. The defendant has not copied a sentence or a word from the complainant's book and, of course, has not appropriated the skill and taste of the complainant in selecting or arranging quotations or any other matter. If, in the case put, the subsequent compiler had simply made, in connection with other lists, a naked list of the authors quoted, it cannot be doubted that he would have the right to select from their works such quotations as he desired. It is well known that Motley produced his great work after years of patient research among the original archives preserved at The Hague and other European capitals, and that he brought to light and translated documents which had laid dormant for centuries. The data thus collected enabled him to tread an almost undiscovered path of history. But can it be contended that a subsequent historian of the Netherlands would be debarred from consulting the same sources of information because he was guided to them by a list made up from Motley's foot notes? It is thought not. The literature of the law as it exists today is the result of evolution. Each author has had the benefit of all that preceded him and has thus been able to add something to the common fund intended to lighten the labors of the profession. It would be a serious blow to jurisprudence were the rule enunciated that the author of a law book is precluded from taking a list of authorities cited by a previous writer on the same subject and making an independent examination of them. Individuals might profit but the development of legal science would be hampered by such a rule,—a rule not of advancement but of retrogression.

The defendant asserts that in no circumstance can the preliminary injunction be upheld for the reason that the complainant has been guilty of a much more flagrant piracy than that charged against the defendant and that, therefore, the complainant has no place in a court where clean hands and "a conscience void of offense" are required. In order to establish this Infringement the defendant has presented to the court a volume entitled "Pointers to Complainant's infringements," which contains a large number of instances of alleged piracy. This exhibit we are not at liberty to consider for the reason that it was not served in time and is no part of the record. But, irrespective of this exhibit, the affidavits describing the method pursued by complainant's editors distinctly charge that they not only used but actually copied paragraphs and syllabi from the copyrighted works of the West Publishing Company and other publishers. This charge has not been denied, but an attempt has been made in the brief to excuse and palliate it. That there have been instances of piracy is, in substance, admitted in the complainant's brief where it said: "While it is undoubtedly true that among the large number of writers, employed by it, some may have been found who through incompetence or carelessess, or a desire to save labor, have used the language found in digests or reports instead of their own, it is very clear from the affidavits that the plaintiff's work has been made up from a study of the original opinions, the digests being used, as it was proper that they should be used, as books of reference to find opinions."

We do not intend to pass upon the question of complainant's infringement as presented by the exhibit referred to, for the reason that the complainant has had no opportunity to meet the charge. We see, however, no escape from the conclusion that if the defendant is an infringer so is the complainant, for their methods in examining the authorities cited in prior copyrighted works are substantially identical. For the reasons before given we do not think that the complainant's acts, when limited to the use of the cases cited in the copyrighted digests, sustain the charge of infringement. Indeed, it would seem quite impossible to compile an encyclopaedia, which includes a general survey of antecedent knowledge, without doing exactly what both parties did in this regard. But if it were piracy in one it was piracy in the other, and a literary pirate is not entitled to much consideration in a court of equity. Consistency requires that the defendant should not be punished for doing that which the complainant does with perfect impunity. An author who has pirated a large part of his work from others is not entitled to have his copyright protected. This proposition is well stated in complainant's work as follows: "When it is said that a mere new disposition of existing materials may be original, this must be taken with the limitation that the materials are such as may be lawfully used; there can be no protection for that which is itself a piracy." Am. & Eng. Ency. of Law (2d Ed.), Vol. 7, p. 536. In Carey v. Faden, 5 Ves. 24, Lord Eldon, said: "What right had the plaintiff to the original work? If I was to do strict justice, I should order the defendants to take out of their book all they have taken from the plaintiff, and reciprocally, the plaintiff to take out of his book all he has taken from Patterson. I think the plaintiff may be contented that a bill is not filed against him."

It is stated in the defendant's brief that the precise question has not been decided in this country and the court has been unable to find such an authority, although the point was presented in Banks v. McDevitt, 13 Blatchf. 163, and Judge Shipmen intimated, at page 169, that the defendant's position if supported by the facts would be sound in law. Upon the general proposition that equity will refuse its aid to a suitor who has himself been guilty of the same inequitable conduct which he denounces in others. See Medicine Co. v. Wood, 108 U. S. 218; Hilson Co. v. Foster, 80 Fed. Rep. 896, 901, and cases cited.

Without intending to decide the question of complainant's infringement we think sufficient doubt is presented by the evidence properly before the court to warrant the refusal of a preliminary injunction. It follows that the order should be reversed with costs.

NOTE.—*Infringement of Copyright of Books Compiled from Common Sources of Knowledge By Appropriating the Results of the Author's Investigations.*—The title of this annotation, while including the subject-matter discussed in the principal cases, is a little broader in its scope than the discussion there. The court in this case limits itself to law-books compiled from common sources of legal knowledge, such as digests and encyclopaedias of law. In this annotation we desire to include all sorts of *compilations* from common sources of knowledge, such as dictionaries of all descriptions, directories, gazetteers, grammars, maps, arithmetics, almanacs, concordances, encyclopaedias of every kind, itineraries, guide-books, and similar publications. It is very evident from the very nature of these publications that subsequent efforts in the same direction will more or less closely resemble the former and effect its sale. The same rule therefore cannot be applied to these publications that determine whether those not compiled from original sources are infringed or not, *i. e.*, whether the alleged infringement is a substantial reproduction of the copyrighted work. Indeed, it is quite possible that two directories of the same city may be so carefully compiled from original sources as to be absolutely identical, and yet one not be an infringement of the other. What then is the rule to be applied to this class of cases? It would be hard to discover what is the correct rule in the case of compilations from a perusal of the decisions. Thus, for instance, in directories the least copying will constitute an infringement, while in the case of encyclopaedias there may be copying to some extent. We will, therefore, take up the several kinds of compilations.

Encyclopaedias and Dictionaries.—The true rule as to encyclopaedias and similar compilations is stated correctly in the case of Webb v. Powers, Fed. Cas. No. 17,323. This was a case of an alleged infringement of a flower dictionary, where the new work contained a few definitions copied from the former dictionary, but was in other respects much smaller and different from the old work. The court held there was no infringement, saying: "A subsequent compiler must not use so much of the arrangement and materials of one prior, as to show a substantial invasion, and without novelty and improvement, so as to indicate new toil and talent. The leading inquiry in such case, is whether the book of the defendants, taken as a whole, is substantially a copy of the plaintiffs; whether it has substantially the same plan and motive throughout, and is intended to supersede the other in the market, with the same class of readers and purchasers, without introducing new matter, and with only colorable deviations." The case of Chils v. Groniund, 41 Fed. Rep. 145, applied this rule to dictionaries, which in form at least cannot be distinguished from encyclopaedias and can very properly be grouped together. In this case it appeared that defendants had, in publishing a Swedish-English dictionary, taken certain words from a similar and prior publication by plaintiff, copying plaintiff's definitions, and, in the case of words of different terminations, from the same root, had omitted the root, leaving it to be understood. The court held that plaintiff's copyright would protect his literary work in composing the English definitions, no matter how short they were, and the mere omission of the root in words of different terminations, from the same root, would not avoid the infringement. In this case, however, it is distinctly affirmed in support of the court's position in the principal case, that a subsequent compiler can use a prior compilation as a source of information. Thus the court said: "The defendant had a right to make and publish a dictionary, and to use plaintiff's dictionary as a source of information, but had not

any right to copy the plaintiff's arrangement and definitions, which he had composed."

Directories.—The law of copyright as applied to directories only requires a subsequent compiler of a directory to do for himself that which the first compiler has done. List Publishing Co. v. Keller, 30 Fed. Rep. 772. In this case it was held that where the commercial value of two society directories depends upon the judgment of the authors in the selection of names of persons of a certain social standing, each directory is original to the extent that the selection is original; hence where the compiler of such directory uses a previous directory of the same character to save himself the trouble of making an independent selection of the persons listed, though only to a very limited extent, he infringes the first compiler's copyright. The rule here applied is avery stringent one and one which is, and which we believe should be strictly confined to directories. The case of Morris v. Wright, L. R. 5 Ch. 279, is important, not only because it modifies the sternness of the rule just announced, but because it is very pertinent to the exact question discussed in the principal case, *i. e.*, the right to make use of a copyrighted work for the purpose of gaining access to the authorities. In this case it was decided that although the compiler of a new directory is not justified in using slips cut from one previously published, for the purpose of deriving information from them for his own work, yet he may use such slips for the purpose of directing him to the parties from whom such information is to be obtained. Two prior case in England (Kelly v. Morris, L. R. 1 Eq. 697; Morris v. Ashbee, L. R. 7 Eq. 34), held identical with the American authority just given. In Kelly v. Morris, we have these much quoted words: "In the case of a dictionary, map, guide-book or directory, when there are certain common objects of information which must, if described correctly, be described in the same words, a subsequent compiler is bound to set about doing for himself that which the first compiler has done; in the case of a road-book, he must count the milestones for himself; and generally, he is not entitled to take one word of the information previously published without independently working out the matter for himself, so as to arrive at the same result from the same common sources of information, and the only use that he can legitimately make of a previous publication is to verify his own calculations and results when obtained." In speaking of this case the court in Morris v. Wright, says: "If this passage goes further that what I take it to mean, I cannot doubt that it goes beyond what the law authorizes. It does not mean that he may not look into a book for the purpose of ascertaining where a particular person lived, and for the purpose of ascertaining whether it was worth his while to call upon that person or not; but it means that he may not take that particular slip and show that to the person and get his authority as to putting that particular slip in."

Law and Historical Publications. — The most pertinent case on the phase of our subject relating to legal or historical compilations is the case of Banks v. McDivitt, 13 Blatch. 163, Fed. Cas. No. 961. In this case, the court held that a book of court rules of practice, annotated with reference to the decisions of the courts, is infringed by another book giving the the same rules, which is annotated by copying the citations of the former book, supplemented by additional citations, though the citations were verified in each instance. In this case, defendant copied in his citations all the cases cited by plaintiff, after verifying them, and then added cases which he collected. This case would seem in some degree, at least, to be opposed to the decision in the principal case. It is clearly borne out, however, by the facts in the case of Callaghan v. Myers, 128 U. S. 617, where the firm of Callaghan & Company were held liable for the infringement of the copyright of Mr. E. B. Meyer, a reporter of certain volumes of the Illinois Reports, by their republication of these reports with the use of syllabi very similar to those prepared by Mr. Meyer, although the evidence was convincing that the editors, in preparing the syllabi, read the cases in Mr. Meyer's reports, and after comparing them with his syllabi, prepared their own syllabi in their own language. The court intimates in this case, that the publishers of a subsequent edition of these reports should have discarded Mr. Meyer's edition altogether, and gone directly to the opinions on file in the clerk's office. In the case of West Publishing Co. v. Lawyers Co-operative Publishing Co., 64 Fed. Rep. 360, 25 L. R. A. 441, it appeared that the defendant company, in preparing its General Digest, used almost *verbatim* the syllabi of the National Reporter System, published by the plaintiff company, although, as in the principal case, the defendant claimed to have been original in the use of words. The court, however, distinctly held that copyrighted headnotes, suitable for use in a digest prepared by the publisher of a series of reports, and a digest, cannot be used by a subsequent compiler of a digest, either directly or by way of suggestion to lighten his labors, except as a guide to verify the accuracy of his work, or to detect errors, omissions, or other faults. This case is well argued by counsel and fully discussed by the court, thus offering a worthy inducement to its careful study.

In the case of Pike v. Nicholas, L. R. 5 Ch. 251, we have the same rule applied to historical works. In this case it was held not an infringement for one writer of a history to consult the work of another author, for the purpose of being guided to the authorities which the former cited, but "that it was a perfectly legitimate course for the defendant to refer to plaintiff's book, and, if taking the book as his guide, he went to the original authorities and compiled his book from them, he made no unfair or improper use of the plaintiff's book."

JETSAM AND FLOTSAM.

THE OLDEST CODE OF LAW.

French archæologists have recently, at Susa, in Persia, the text, transcribed on a diorite column, of the oldest law code of which we have knowledge. This is the code of Hammurabi, king of Babylon, about 2300 B. C. The code has been translated by a French Assyriologist, and from a summary of these enactments The Literary Digest gives the following interesting items:

Legal cases were tried before a court of judges, at the head of whom was a president. The facts in the case were learned through witnesses and written documents. The care taken in this regard is evident from the following example: "If anybody has bought, or received as a deposit, silver, or gold, or a male slave, or a female slave, or a steer, or a sheep, or an ass, or anything else from a free man or a slave without witnesses or written documents, he is to be treated as a thief and shall be killed."

In some cases there was even an appeal to divine judgment. The accused was compelled to go down into a stream of water, and "if the river seized him" he was guilty; but "if he remained in good health," he was innocent. In this way those charged with witchcraft and women accused of infidelity, but not caught in the act, were tried.

The punishments inflicted were severe. Death was the penalty for witchcraft or for false oath in capital cases, or for robbing a temple or royal possessions. Any persons who permitted a slave to escape, or harbored an escaped slave, was punished by death, as was an official who failed to attend to his duties himself but intrusted these to a substitute. The death penalty was inflicted either by fire, or drowning, or impaling. The first method was applied in the case of those who during a fire had stolen goods. Drinking-places were seemingly as much in discredit at that age as they are now. We learn that such places were generally kept by women, and they were headquarters for dangerous political agitations. The code declares that if the landlady failed to report dangerous inmates to the authorities, she was to die. A priestess was not allowed to enter such a drinking-place under penalty of death. Death by drowning was applied in the case of an adulteress, "unless the husband grants his wife her life, and the king does the same to his servant." Crimes of less serious character were sometimes followed by loss of some member of the body, it being the rule to cut off that member which had been guilty of that offense. In this way an adopted daughter or adopted son who said to his foster-father and mother that they were not his parents should lose his or her tongue.

In general the Old Testament principle of an "eye for an eye and a tooth for a tooth" is consistently carried out in this Babylonian code. Among other things it says: "If a man knock out the eye of a freeman, his own eye shall be forfeited. If he break one of the members of a man, his own member shall be removed." But this rule applied only in the case of freemen. If the suffering party were a slave, a payment of money could make good the wrong; the same was true of a freedman. On the other hand, if an inferior struck a superior, he was punished with fifty lashes, and, if he was a slave, his ear was cut off. The *lex talionis* was carried so far that if a surgeon was unsuccessful in performing an operation, he was not entitled to any pay. If the patient died under the hand of the surgeon, the latter lost his hands, in case the patient was a freeman. If a slave died under his hand, he must buy another. In case a builder made a failure of a structure he was also punished with death. Whether imprisonment was one method of punishing wrongdoers does not appear, but evidently, if at all applied, it was of comparatively small importance. Money fines were, however, very common, and were proportionate to the wrong done. He who falsely claimed that another was indebted to him must pay one-third of a *mina*. Freemen fighting were fined one *mina*. Theft of an animal was punishable by a fine of thirty times it value.

Hammurabi was much concerned for the safety of his highways. A robber who attacked a person on the public road was killed, or if he could not be found, then the community in whien the crime had taken place was fined a *mina*, in case the life of a human being had been lost. In addition to these forms of punishment. transgressing officials could be removed from office or banished from the city or the state. Some of the paragraphs throw strange light on the state of sexual morals in that period.

Among other things, the priestesses and hierodule system, so imperfectly known from classical writers, are here for the first time seen in their proper light.—*The Green Bag.*

BOOK REVIEWS.

PAUL ON TRADE-MARKS.

Every year, gradually but quite perceptably, the tendency of law publishers is toward the publishing of works on comparatively narrow topics of the law. Whereas, years ago, a book on torts covered a multitude of sins as well as of legal principles, to-day, a text-book on that question is hardly ever cited except on some pure and general question of tort, all the special branches of the law once included therein having each its separate treatise in some cases as large in size or larger than the original text-book on the subject of torts. Of this character is the new work just issued from the press on the subject of Trade-Marks by Amasa C. Paul of the Minneapolis bar. This work includes also the subjects of trade-names and unfair competition. The effort of the author, according to his own statement, has been to produce a practical work for the practitioner of trade-mark law. The state and federal decisions on the subject have been exhaustively collated. The trade-mark statutes of the several states have been compiled and put in the form of an appendix. We have examined this volume thoroughly and find that this work not only completely exhausts the subject of trades-marks but, what is more important, is arranged and discussed in such a logical manner as to make all this mass of authorities easily accessible. Nothing more can be asked of any text-book by the practicing lawyer; nothing less, however, should be even tolerated. Bound in one volume of 981 pages and published by Keefe-Davidson Company, St. Paul, Minn.

LOVELAND'S ANNOTATED FORMS OF FEDERAL PRACTICE.

One of the most important and practical works for the lawyer that has come to our attention for some time is one just recently placed upon the editorial desk, and identified by the title given above. To the federal practitioner the most frequent occasion for hesitation or stumbling is in the matter deciding upon the proper forms, the many varieties of pleadings, motions, and appeals that abound in our federal court procedure. A noted practitioner in the federal courts once said: "There are but two things for a competent attorney to learn in practice in the federal courts; one is to know how to get your case into the courts, and the other is to know how to stay there when you are once in." Loveland's Annotated Forms of Federal Practice solves these two problems. It is a collection of forms in federal practice gathered from actual cases—forms that have been prepared by the most noted practitioners in the United States, and have been approved in actual practice by the federal courts. They are forms that have withstood the most vigorous attack of adversary pleading, and have stood the test and strain of the best thought and most acute reasoning. Each form is thoroughly annotated, showing the cases supporting the proposition it contains.

Mr. Frank O. Loveland, the author, compiler, and annotater of these forms, is at the present time clerk of the United States Court of Appeals for the Sixth

Circuit. He is a man of acute intellect and very highly considered by the lawyers practicing in his district, and, in fact, by any one enjoying the privilege of his acquaintance and conversation. The editor of the CENTRAL LAW JOURNAL and the writer of this review knows Mr. Loveland, and is fully acquainted with his peculiar and exceptional ability, and his complete and accurate knowledge of every detail of federal procedure. With this knowledge, and after a careful investigation of the more than 2,000 pages comprised in the two volumes of this new edition of Mr. Loveland's Annotated Forms of Federal Practice, we unhesitatingly pronounce it the *greatest* work of its kind in this country, and practically the *only* work that can even compare with it in exhaustiveness, accuracy, and accessibility. lawyer could hardly conceive of a case of federal jurisdiction that these two volumes would not provide all the forms necessary for instituting the action and carrying it successfully and successively through every possible stage to its ultimate appeal and final disposition. Published by W. H. Anderson Co., Cincinnati, Ohio.

DILLON'S JOHN MARSHALL.

The celebrations of the centennial of the installation of John Marshall, as portrayed in the addresses and proceedings throughout the United States on Marshall Day, 1901, have been carefully compiled and edited by Hon. John F. Dillon, in a manner that makes very entertaining reading.

At the annual meeting of the American Bar Association held in 1898, a committee was appointed, consisting of one member from each state and territory and the District of Columbia, to bring the matter of a proper observance of "John Marshall Day" to the attention of bench and bar of the United States. This committee recommended that not only the bar associations of the several states should properly observe the day, but that commemorative exercises should be held at all schools of law and institutions of learning throughout the country. Judge Dillon has compiled all these proceedings in three large octavo volumes, and, as may well be supposed, they contain a vast amount of eloquence and legal lore. It is surprising, however, that among the numerous addresses delivered on Marshall Day, emanating from every state in the union, so little of repetition is found in them. In these addresses references are made to the various important constitutional questions upon which Judge Marshall expressed opinion. All admit the importance of his celebrated opinion in Marbury v. Madison. As Judge U. M. Rose happily puts it, "Next to the formation of our government, the decision of Marbury v. Madison is perhaps the most important event of our history. Had this case been decided otherwise, our constitutions, state and federal, would have been mere ropes of sand. Every department of each might have had its own code of constitutional law, all equally authoritative. With our forty-five states this would be confusion worse confounded. We should have neither unity, harmony nor perpetuity; for a house that is divided against itself cannot stand. Anarchy and the South American system of *pronunciamientos* must have been the result. Very recently the Australian confederation has given its sanction to the principle announced in the Marbury case." There is evolution in government, as well as in the physical. Marshall laid the foundation for the enlargement of federal authority, and the exigencies of some vital questions, among them the trusts and labor questions, seem to indicate that a further enlargement may be necessary to cope with difficulties that municipal and state governments seem powerless to control.

Not alone as a great lawyer, judge and statesman did Marshall shine, but as a true gentleman, of which the state of Virginia has furnished so many honorable and illustrious examples. He was genial, kind-hearted, generous, pious—a remarkable example of the force of heredity; of a naturally and inherently great man. The soul, the real underlying intellect of John Marshall, was great at birth; it was great before birth. Not so learned as some, but a genius. Physically tall, and well proportioned, not "cheated of feature by dissembling nature."

In the addresses in these volumes will be found a fairly detailed and complete history of the period from 1785 to 1835, a very important half century. The introduction by Judge John F. Dillon occupying fifty pages, is a masterly composition done in the purest and choicest English. It must be read to be appreciated. His statement of his relationship to the work as compiler, and the motives which led to its undertaking; his characterization of the work as a labor of love, and his pathetic reference to the debt, he, with every lawyer, owes his profession; his discriminating judgment of Marshall and his reviewers are set forth with a strength of thought and purity of diction, which may be styled Emersonian, but is Dillonesque. The illustrations show the celebrated St. Memin portrait, also the Gutekunst reproduction of the Inman portrait, and another never before published, and reproduced from the original in oil by Sully. They show the Oak Hill and Richmond homes, the Story statue, also a *fac-simile* letter to the Hon. Richard Peters.

This work compiled by Judge Dillon is a fitting climax to the celebration of John Marshall Day, and has put in permanent form the record of this celebration. There are also added the classic orations of Binney, Story, Phelps, Waite and Rawle. This work will certainly be welcomed by the legal profession as well as by students and readers throughout the country, and should bring good financial returns to the compiler and publishers. In three octavo volumes aggregating 1,700 pages, on very heavy paper. Mechanically it is all that can be desired. Published by Callaghan & Co., 114 Monroe Street, Chicago.

HUMOR OF THE LAW.

A bright lawyer, whose ability at the particular moment was apparently much eclipsed by the results of a prolonged spree, walked into a saloon and demanded a glass of whiskey on credit.

"Don't give credit here," said the bartender. "We don't take any man's word."

The lawyer pulled from under his arm, a large family bible, and laying it upon the counter, offered it as security. The bartender still refused to break the rule of the house. A look of disgust spread over the lawyer's face.

"If you won't take my word, nor the Word of God, you can go to the devil."

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. ACCIDENT INSURANCE—Immediate Notice.—Condition of accident policy that immediate notice of the accident shall be given does not apply where notice is prevented by unconsciousness of insured, resulting from the accident.— Hayes v. Continental Casualty Co., Mo., 72 S. W. Rep. 135.

2. ACCORD AND SATISFACTION—Acceptance of Lease. —Acceptance of lease with provision for crediting of royalties on debt owing to lessee held not an accord and satisfaction.—Boston New Market Gold Min. Co v. Orme, Colo., 71 Pac. Rep. 885.

3. APPEAL AND ERROR—Abbreviated Record. Where a judgment recites that witnesses testified, and documentary evidence was introducrd, it cannot be assumed on appeal that an abbreviated record contains all the evidence.—Curtis v. Boquillas Land & Cattle Co., Ariz., 71 Pac. Rep. 924.

4. APPEAL AND ERROR—Dismissal.—After an appeal has been duly entered, and the cause transferred, the clerk of the circuit court has no authority to dismiss the appeal.—Da Costa v. Dibble, Fla., 33 So. Rep. 466.

5. APPEAL AND ERROR—Record.— On appeal the judgment appealed from must appear in the transcript as a part of the record, and cannot be shown by a bill of exceptions merely.—Street v. Frank, Ala., 33 So. Rep. 879.

6. APPEAL AND ERROR—Rehearing. — Where a cause has been decided on appeal, the questions involved cannot be reheard on a second appeal; any remedy being by petition to rehear.—Holley v. Smith, N. Car., 48 S. E. Rep. 501.

7. ARBITRATION AND AWARD—Selection of Arbitrators. —Under the law of Connecticut, which provides that, in case of arbitration in a pending action, each party may appoint an arbitrator and the court may appoint a third, the fact that the parties select three arbitrators by agreement does not invalidate the award, where they proceed to judgment without objection. — Judson v. United States, U. S. C. C. of App. Second Circuit, 120 Fed. Rep. 637.

8. ASSAULT AND BATTERY—What Constitutes —An instruction that the use of any object with intent to alarm another, and under circumstances calculated to do so, constitutes an assault, held not warranted by Pen. Code, art. 592, subd. 3.—Barnes v. State, Tex., 72 S. W. Rep. 168.

9. ATTORNEY AND CLIENT—Accounting.—Where an attorney of an executrix has rendered to his client an account of all moneys or other assets coming to his hands, he is not liable in a subsequent action by the executrix for a further accounting.—Hernandez v. Dart, La., 33 So. Rep. 905.

10. ATTORNEY AND CLIENT—Dismissal of Suit. — Attorneys prosecuting a suit for a contingent fee cannot prevent a dismissal by plaintiff, nor prosecute the suit on their own motion, under Acts 1899, ch. 243, § 1.—Tompkins v. Nashville, C. & St. L. Ry., Tenn , 72 S. W. Rep. 116.

11. BANKRUPTCY—Chattel Mortgage.—Under the law of North Carolina, which makes a mortgage effective from the date when it is filed for record, a chattel mortgage given by bankrupts is good, as against their other creditors, where it was filed for record on the day before the filing of the petition in bankruptcy.— Davis v. Turner, U. S. C. C. of App., Fourth Circuit, 120 Fed. Rep. 605.

12. BANKRUPTCY — Eligibility of Trustee. — That a trustee, elected to represent a bankrupt, was a stockholder in a corporation having a large claim against the bankrupt, etc., held not to disqualify him to act as trustee. —*In re* Lazoris, U. S. D. C., E. D. Wis., 120 Fed. Rep 716.

13. BANKRTPTCY — Exemption. — A bankrupt in South Carolina is not entitled to exemption from personal property which is not paid for.—Cannon v. Dexter Broom & Mattress Co., U. S. C. C. of App., Fourth Circuit, 120 Fed. Rep. 657.

14. BANKRUPTCY — Homestead.—Business block, occupied as a residence six days before bankruptcy and in contemplation thereof, held a homestead under Const. Ark. art. 9, §§ 3, 5.—*In re* Irvin, U. S. C. C. of App., Eighth Circuit, 120 Fed. Rep. 783.

15. BANKRUPTCY—Objections to Discharge.—A specification of objections to the discharge of a bankrupt is not a pleading, within the meaning of Bankr. Act 1898, § 18c, U. S. Comp. St. 1901, p 3429, requiring all pleadings setting up matters of fact to be verified, and such specifications need not be verified.—*In re* Jamieson, U. S. D. C. N. D. Ill., 120 Fed. Rep 697

16. BANKRUPTCY — Preferences — Payments by wife of bankrupt in settlement of claims against him held not to be preferences, within section 60, subd. "b" of the bankruptcy act, 30 Stat. 562 (U. S. Comp. St. 1901, p. 3445.)— Goode v. Elwood Lodge, No. 166, K. P., Ind., 66 N. E. Rep. 742.

17. BANKRUPTCY — Second Petition to Review. — One held not entitled to a second petition for review of the same proceeding in bankruptcy.—Beach v. Macon Grocery Co., U. S. C. C. of App., Fifth Circuit, 120 Fed. Rep. 735.

18. BANKRUPTCY—Wages During Vacation.—The fact, that the clerks of a bankrupt were given vacations with pay, within three months prior to the bankruptcy, the pay, however, to be withheld until the end of the year during which time the bankruptcy occurred, does not deprive them of the right to prove their claim for such pay, nor to their priority as wages due which were earned within three months.—*In re* B. H. Gladding Co., U. S. D. C., D. R. I., 120 Fed. Rep. 709.

19. BANKS AND BANKING—Authority of Cashier.—Bank cashier held to have no authority by virtue of his office to bind the bank by representations as to the solvency of the customer.—Taylor v. Commercial Bank, N. Y., 66 N. E. Rep. 726.

20. BANKS AND BANKING—Gambling Transactions. — Bank, crediting depositor with checks drawn by another depositor of the bank, cannot charge off the credit and defend on the ground that the checks were given in a gambling transaction.—Bryan v. First Nat. Bank, Pa. 54 Atl. Rep. 480.

21. BENEFIT SOCIETIES — Suicide as a Defense. — A mutual benefit certificate payable to a designated beneficiary, and which is silent on the subject of suicide, becomes void if the insured commits suicide when sane, but not if he is insane.—Mooney v. Ancient Order of United Workmen, Ky., 72 S W. Rep. 288.

22. BILLS AND NOTES — Pleading.—The unauthorized stamping of the note sued on as "Paid" may be shown without pleading, there being no effort to reform for mutual mistake.—Ashburn v. Evans, Tex., 72 S. W. Rep, 242.

23. BUILDING AND LOAN ASSOCIATIONS — Contract to Mature Stock. — Undertaking of building association to

mature certain sharesin a specified time held not affected by a loan from the association to the holder of such shares on the security of his shares. — Eastern Building & Loan Assn. v. Williamson, U S. S. C., 23 Sup. Ct. Rep. 527.

24. BUILDING AND LOAN ASSOCIATIONS — Delinquent Payments.—Fines for delinquent payments held waived by a building and loan assaciation, so as not to be chargeable against borrower in action by him to cancel note and trust deed. — Arbuthnot v. Brookfield Loan & Building Assn., Mo., 72 S. W. Rep. 132.

25. CARRIERS — Demurrage Charge. — A consignee of freight was not excused from noncompliance with his duty to unload it from the cars within the time stipulated in the bill of lading by reason of the extreme condition of the weather. — Darlington v. Missouri Pac. Ry. Co., Mo., 72 S. W. Rep. 122.

26. CARRIERS — Interstate Commerce. — Suit to enjoin common carrier from discriminating between localities in violation of act to regulate commerce could not be brought on behalf of the United States at the request of the Interstate Commerce Commission prior to Act of Cong. Feb. 19, 1903. — Missouri Pac. Ry. Co. v. United States, U. S. S. C., 23 Sup. Ct. Rep. 507.

27. CARRIERS—Value of Animal.—Owner's evidence of increased value of bitch by having been put up with dog for breeding purposes held improperly admitted in action for negligently killing the animal. — American Exp. Co. v. Bradford, Miss., 33 So. Rep. 843.

28. COMMERCE—Sleeping Car Tax.—The privilege tax imposed by Code Miss. 1892, §§ 3317, 3387, on sleeping car companies carrying passengers within the state held not an unconstitutional regulation of commerce.—Pullman Co. v. Adams, U. S. S. C., 23 Sup. Ct. Rep. 494.

29. CONSTITUTIONAL LAW—Compulsory Vaccination.—Rev. Laws, ch. 75, § 137, authorizing the board of health to compel the vaccination of the inhabitants of a town or city, held a valid exercise of the state's police power under Const. ch. 1, § 1, art. 4.—Commonwealth v. Pear, Mass., 66 N. E. Rep. 719.

30. CONSTITUTIONAL LAW —Detention of Trespassing Animals.—So much of Laws 1893, p. 32, No. 41, as authorizes a sale of trespassing animals by the pound master to pay damages, etc., held unconstitutional —Greer v. Downey, Ariz., 71 Pac. Rep. 900.

31. CONSTITUTIONAL LAW—Due Process of Law. — A Kentucky corporation operating a ferry over the Ohio river is deprived of property without due process of law by the state including for taxation in the value of the franchise derived from Kentucky the value of an Indiana franchise for a ferry, which such corporation had acquired.—Louisville & J. F. Ry. Co. v. Commonwealth of Kentucky, U. S. S. C., 23 Sup. Ct. Rep. 463.

32. CONSTITUTIONAL LAW — Forest Reservation.—The regulations of a department officer cannot make the use of a forest reserve for grazing purposes a crime, unless such use is especially made an offense by statute.—Dent v. United States, Ariz., 71 Pac. Rep. 920.

33. CONSTITUTIONAL LAW—Impairment of Obligation. —Obligation of contract between water company and private consumers held not impaired by a municipal ordinance reducing the rates.— Knoxville Water Co. v. City of Knoxville, U. S. S. C., 23 Sup. Ct. Rep. 531.

34. CONTRACTS — Capacity. — Want of capacity to contract will not be presumed because of old age or physical infirmities.—Chadd v. Moser, Utah, 71 Pac. Rep. 870.

35. CONTRACTS — Public Policy. — Agreement between shareholders of business corporation to sell share to fellow shareholders on death of the shareholder held not against public policy.—Fitzsimmons v. Lindsay, Pa., 54 Atl. Rep. 488.

36. CONVICTS—Contract Between Hirer and Judge — Where a convict bond is given, and a prisoner released from custody by virtue thereof, he may nevertheless be returned to custody by agreement between the hirer and the judge.—*Ex parte* Miller, Tex., 72 S. W. Rep. 183.

37. CONVICTS—Injury. — Convict hired out to railroad company held entitled to recovery for negligent injury. —San Antonio & A. P. Ry. Co. v. Gonzales, Tex., 72 S. W. Rep 213.

38. COPYRIGHTS—Unbound Sheets.—One who has purchased unbound copyrighted volumes from the owner of the copyright or his licensee has the right, so far as the copyright statute is concerned, to bind and resell the same. — Kipling v. G. P. Putnam's Sons, U. S. C. C. of App., Second Circuit, 120 Fed. Rep. 631.

39. CORPORATIONS — Directors Holding Over. — Hold-over directors of a corporation are still in office and qualified to act until their successors are elected and qualified. — Hatch v. Lucky Bill Min. Co., Utah, 71 Pac. Rep 865.

40. CORPORATIONS—Knowledge of Director.—A corporation is not bound by the knowledge possessed by a director of his own unauthorized act.— Sanford Cattle Co. v. Williams, Colo., 71 Pac. Rep. 889.

41. CORPORATIONS — Liability of Directors.—Under the bill of a corporate creditor, held that he could not hold the directors liable on the theory that he had the right to follow the corporate assets into their hands. — Force v. Age-Herald Co., Ala., 33 So. Rep. 866.

42. CORPORATIONS—Liability of Shareholder.—By subscribing to stock in a foreign corporation, the subscriber subjects himself to the laws of the foreign country as to the powers and obligations of such corporation. — Nashua Sav. Bank v. Anglo-American Land, Mortgage & Agency Co., U. S. S. C., 23 Sup. Ct. Rep. 517.

43. CORPORATIONS—Service of Process.—Where a person, served with process as the representative of a corporation, deposed that he was not "at that time" secretary, etc., his failure to object that he was not such "at or after the time" of service did not justify the inference that he was such officer —Scott v. Stockholders' Oil Co., U. S. C. C. of App., E. D. Pa., 120 Fed. Rep. 698.

44. CRIMINAL EVIDENCE — Opinions as to Age. — In a prosecution for selling liquor to a minor, it was not error to allow witnesse for the state to give their opinions as to the age of the prosecutor, judging from his appearance.—Earl v. State, Tex., 72 S. W. Rep. 175.

45. CRIMINAL LAW — Accomplice. — One who keeps watch while another burglarizes a house is an accomplice.—Winfield v. State, Tex., 72 S. W. Rep. 182.

46. CRIMINAL LAW — Indeterminate Sentence Law. — The indeterminate sentence law, providing for the sentencing of criminals, held constitutional. — Shular v. State, Ind., 66 N. E. Rep. 746.

47. DAMAGES — Elevated Railroad. — Noise incident to the operation of an elevated street railroad held special damage to abutting property, for which the owner was entitled to compensation, under St. 1894, p. 764, ch. 9.— Baker v. Elevated Ry. Co., Mass., 66 N. E. Rep. 548.

48. DAMAGES — Excessive. — Where a railroad employee's injuries resulted in the amputation of his right leg below the knee, a verdict of $7,000 was not excessive.— Seaboard Air Line Ry. v. Phillips, Ga., 43 S. E. Rep. 494

49. DAMAGES — Mortality Tables. — Where the capacity of the party injured to earn money is partially, but permanently impaired, mortality tables are admissible for the purpose of determining the damages. — San Antonio & A. P. Ry. Co. v. Moore, Tex., 72 S. W. Rep. 226.

50. DEATH—Undue Influence.—Where a mother deeded her home to her children, in consideration of care, attention, and assistance in the past and support for the rest of her life, undue influence will not be presumed.— Chadd v. Moser, Utah, 71 Pac. Rep. 870.

51. DEEDS — Undue Influence. — Influence resulting from sympathy and affection of grantor for grantee is not sufficient to avoid a deed. — Adair v. Craig, Ala., 33 So. Rep. 902.

52. ELECTION OF REMEDIES — Fraud of Purchaser.— Where goods are obtained by fraud of the purchaser, and the seller rescinds the contract and obtains a decree adjudging the contract void, he cannot thereafter sue

for damages for the fraud. — Bacon v. Moody, Ga., 43 S. E. Rep. 482.

53. EMBEZZLEMENT — Conversion of Funds. — Where a city council passes an ordinance to construct sewers, and assesses the costs, the assessments to be paid to the clerk of the corporation, and the clerk collects a part of said assessments, he is "charged with such funds," within Rev. St. § 6841, and, if he converts the same to his own use, is guilty of embezzlement. — State v. Carter, Ohio, 66 N. E Rep. 587.

54. EVIDENCE — Admissibility. — Parol evidence held admissible to show that, when the payees of an accommodation note indorsed it, it was under agreement that the maker should not sell it until he had obtained a third indorser.—Caudle v. Ford, Ky., 72 S. W. Rep. 270.

55. EVIDENCE—Chattel Mortgage.—A chattel mortgage on a stock of goods held not void for insufficiency of description, when aided by parol evidence to identify the stock. — Davis v. Turner, U. S. C. C. of App., Fourth Circuit, 120 Fed. Rep. 605.

56. EVIDENCE—County Seats.—The supreme court will take judicial notice that not all of the county seats in the territory are situated in the largest towns and centers of population. — Maricopa County v. Burnett, Ariz., 71 Pac. Rep. 908.

57. EVIDENCE — Parol. — The doctrine that a written contract excludes parol evidence of the previous negotiations does not apply in an action based on fraud in procuring the contract. — Leicher v. Keeney, Mo., 72 S. W. Rep. 145.

58. EVIDENCE — Undue Influence. — Declarations of a grantor, made after execution of a deed, held inadmissible to show undue influence.—Adair v. Craig, Ala., 33 So. Rep. 902.

59. EXCEPTIONS, BILL OF—Signing After Term.—Under Code 1896, §§ 616, 619, held, that an order extending the time for the signing of a bill of exceptions, made after the expiration of the time fixed during term, gives no authority for signing. — City of Florence v. Irvine, Ala., 33 So. Rep. 888.

60. EXECUTION — Deed to Wife. — A failure to show good faith and absence of notice in a purchaser at execution sale subsequent to deed by the debtor to his wife relieves those claiming through the wife from showing more than a vesting of title in her by the deed. —Watts v. Bruce, Tex., 72 S. W. Rep. 258.

61. EXECUTORS AND ADMINISTRATORS—Death of Partner. — Notes issued by a firm after legacy by deceased partner of his business to surviving partner held not binding on the deceased partner's executors.—Fleming v. Fleming, Pa., 54 Atl. Rep. 473.

62. EXECUTORS AND ADMINISTRATORS — Public Lands. —The United States may maintain an action against an executor to recover the value of timber alleged to have been unlawfully cut and removed from public lands by his testator; the trespass being one from which the state received a benefit.—United States v. Bean, U. S. D. C., D. Mont., 120 Fed. Rep. 719.

63. EXECUTORS AND ADMINISTRATORS—Suit Against in Another State. — A suit cannot be maintained against foreign executors in Illinois in either a state or federal court, where there is no property of the testator's estate within the jurisdiction. — Filer & Stowell Co. v. Rainey, U. S. C. C., N. D. Ill., 120 Fed. Rep. 718.

64. FALSE PRETENSES — Evidence.—In order to convict under Laws 1891, ch. 4032, for obtaining money by false promises, it is necessary that the money shall be obtained by the false promise with intent to defraud.—Edwards v. State, Fla., 33 So. Rep. 853.

65. FEDERAL COURTS—Constitutional Law.—An appeal lies directly to the Supreme Court of the United States from a decree of the circuit court dismissing an appeal based on alleged unconstitutionality of municipal ordinances as impairing obligation of contract. — Davis & Farnum Mfg. Co. v. City of Los Angeles, U. S. S. C., 23 Sup. Ct. Rep. 498.

66. FEDERAL COURTS — Suit Against United States.— Where a person is injured in a passenger elevator in a public building, the United States is not liable to an action under Tucker Act March 3, 1887, ch. 359, 24 Stat. 505, U. S. Comp. St. 1901, p. 752.—Bigby v. United States, U. S. S. C., 23 Sup. Ct. Rep. 468.

67. FIRE INSURANCE—Proofs of Loss.—Where proofs of loss had been waived, the requirement that they be furnished could not be revived by a subsequent demand therefor. — Roberts v. Insurance Co. of America, Mo., 72 S. W. Rep. 144.

68. FIRE INSURANCE — Time for Bringing Action. — Where an insurance policy provides for action thereon within a certain time, the specified period is not extended, for purposes of a second action, by an action commenced within time, but not prosecuted. — Ward v. Pennsylvania Fire Ins. Co., Miss., 33 So. Rep. 841.

69. FORGERY — Alteration of Instrument.—On trial for forgery, evidence of an immaterial alteration of the instrument alleged to have been forged held insufficient to constitute forgery. — Turnipseed v. State, Fla., 33 So. Rep. 851.

70. FORGERY — Gratuitous Order. — A mere gratuitous order from A to B to let C have such goods as he may desire, without any obligation upon B to comply with such order, and without obligating A to pay for the goods, is not the subject of forgery.—West v. State, Fla., 33 So. Rep. 854.

71. FRAUD — Caveat Emptor. — Rule of *caveat emptor* held not to apply to purchaser of territorial rights under a patent.—Coulter v. Clark, Ind., 66 N. E. Rep. 739.

72. FRAUD — Remedy of Vendee.—A vendee, relying on the vendor's fraudulent representations as to some specific fact, may, on the discovery of the fraud, stand by the purchase and sue for the fraud. — Leicher v. Keeney, Mo., 72 S. W. Rep. 145.

73. FRAUDS, STATUTE OF — Evidence of Contract. — Telegrams and letters construed to constitute a contract of sale, valid under the statute of frauds.—Peycke v. Ahrens, Mo., 72 S. W. Rep. 151.

74. FRAUDS, STATUTE OF—Fraudulent Representations. —Fraudulent representations, inducing plaintiff to purchase worthless patent rights, held not representations concerning the character, ability, etc., of another, within the meaning of the statute of frauds, Burns' Rev. St. 1901, § 6634.—Coulter v. Clark, Ind , 66 N. E. Rep. 739.

75. FRAUDULENT CONVEYANCES—Suit to Set Aside.—In a suit to set aside an alleged fraudulent conveyance, evidence to prove a set-off held properly excluded, where not pleaded by a cross-bill. — Noble v. Gilliam, Ala., 33 So. Rep 861

76. GAMING — Public Place. — A place in the yard or curtilage of a private house, 40 feet away and open to observation from a public highway, is *per se* a public place, within the meaning of Code 1896, § 4792, prohibiting gaming in a public place.— Lee v. State, Ala., 33 So. Rep. 894.

77. GARNISHMENT— Petition in Bankruptcy.—A plaintiff in garnishment does not waive such proceeding by petitioning in the federal court that defendant be declared a bankrupt.—Sullivan v. King, Tex., 72 S. W. Rep. 207.

78. GAS—Regulating Price.—Under Act March 14, 1867, Burns' Rev. St. 1901, § 3623, the common council may fix a maximum price to be charged for gas supplied by a company to whom it gives lighting privileges.—Munice Natural Gas Co. v. City of Munice, Ind., 66 N. E. Rep. 436.

79. GAS—Right to Maintain Telephone Line.— Natural gas company, incorporated under Act May 29, 1885, cannot maintain on its right of way a telegraph or telephone line. — Woods v. Greensboro Natural Gas Co., Pa., 54 Atl. Rep 470.

80. HABEAS CORPUS — Common-Law Remedy. — The writ of *habeas corpus* is a common law and not an equitable remedy.— Sumner v. Sumner, Ga., 43 S. E. Rep. 485

81. HEALTH—Vaccination. — Medical history of individual cases of vaccination held inadmissible in a prosecution for defendant's refusal to permit himself to be vaccinated. — Commonwealth v. Pear, Mass., 66 N E. Rep. 719.

82. HOMESTEAD—Subsequent Selection.—A purchaser from a husband of a large tract of land, including the homestead, is required to take notice as to what part of the land the husband may afterwards choose to select. —Slappy v. Hanners, Ala., 33 So. Rep. 900.

83. HOMICIDE—Evidence.— In a prosecution for murder, where defendant claimed that deceased had insulted his daughter, evidence of slanderous remarks made by deceased concerning various other young ladies was not admissible. — McComas v. State, Tex., 72 S. W. Rep. 189.

84. HUSBAND AND WIFE—Deed to Wife.— A deed from a husband to a wife is sufficient to vest the title in her, without any recital that it was to become her separate estate.—Watts v. Bruce, Tex., 72 S. W. Rep. 258.

85. IA Relief Against State Taxation — Cattle and oth property furnished by the United States to Indians allottees under Act Feb. 8, 1887, ch. 119, § 5, 24 Stat. 389, to enable them to maintain themselves, are not subject to state taxation.—United States v. Rickert, U. S. S. C., 23 Sup. Ct. Rep. 478.

86. INJUNCTION — Attorney's Fees. — An injunction being ancillary to the principal relief, only such services of the attorneys as are chargeable against the motion to dissolve the injunction are recoverable on the injunction bond. — Church v. Baker, Colo., 71 Pac. Rep. 888.

87. INSOLVENCY — Contract by Trustee. — A contract made by a trustee of an insolvent corporation, by which it was agreed that a third party should conduct a pending suit at his expense and receive a share of the recovery, held valid and enforceable. — Wooster v. Townbridge, U. S. C. C. of App., Second Circuit, 120 Fed. Rep. 667.

88. INTEREST — Action for Tort.— Interest should be allowed on a judgment liquidating the damages in an action for tort from its date. — Ortolano v. Morgan's L. & T. R. & S. S. Co., La., 33 So. Rep. 914.

89. JOINT TENANCY — Survivorship. — A grant to four persons, to hold as joint tenants and not as tenants in common, creates an estate subject to the right of survivorship.—Redemptorist Fathers v. Lawler, Pa., 54 Atl. Rep. 487.

90 JUDGMENT—Mortgaged Property.—An adjudication, in a suit by a receiver of mortgaged property against persons claiming under execution sale, that it was subject to the mortgage, held not to bring the property into the custody of the court, so as to invalidate an execution sale to strangers to the suit.—Pardee v. Aldridge, U. S. S. C., 23 Sup Ct. Rep. 514.

91. JUDGMRNT — Setting Aside Compromise.— A judgment rendered on a compromise in an action for the recovery of land held not subject to be set aside, because defendant did not represent all the title adverse to plaintiffs.—Watts v. Bruce, Tex., 72 S. W. Rep. 258.

92. JUDGMENT—Sufficiency of Entry. — Where indices of a judgment abstract are kept on the vowel system, a purchaser of property whose vendor's name may be spelled with either one or two vowels is bound to search under both —Green v. Meyers, Mo., 72 S. W. Rep. 128.

93 JURY — Cancellation of Deed. — An action to cancel a deed for fraud, being equitable in its nature, may be tried by the court.— Kyle v. Shore, Colo., 71 Pac. Rep. 895.

94. JURY — Delay in Demanding 32 Digests.— Where a trial had been in progress for more than 30 days before the court, it was too late to petition for a trial by jury.—Whitcomb v Stringer, Ind., 66 N. E. Rep. 443.

95. JURY—Voir Dire Examination. — Failure to investigate jurors' competency on *voir dire* held to preclude urging their prejudice on motion in arrest.— Russell v. State, Tex., 72 S. W. Rep. 190.

96. LANDLORD AND TENANT—Latent Defects.—Lessee cannot recoup, against lessor's claim for rent, damages resulting from bursting water pipes, when it was expressly agreed that lessor should not be liable for defective condition of pipes.— Bullock McCall-McDonnell Electric Co. v. Coleman, Ala., 33 So. Rep. 884.

97. LARCENY—Theft of Horse.—On a prosecution for horse theft, and instruction that the jury should acquit, if defendant "believed" the horse had been borrowed by one and turned over to him, held proper.—Windon v. State, Tex., 72 S W. Rep. 198.

98. LIBEL AND SLANDER — Publication as to a Class.— One of a class to whom a libelous article refers may sue to recover, as if individually libeled.—Bornmann v. Star Co., N. Y., 66 N. E. Rep. 728.

99. LICENSES—Proof of License Tax.—In a prosecution for pursuing an occupation without license, the state should not merely show the orders of the commissioner's court levying the tax, but also, from the minutes of the court, the amount of such levy.— Barnes v. State, Tex., 72 S. W. Rep. 177.

100. LICENSE—Revocation. — Tenant held not entitled to revoke license given railroad company by owner to use of switch track on the land.— Darlington v. Missouri Pac. Ry. Co., Mo., 72 S. W. Rep. 122.

101. LICENSES—Signing Petition.—Signers of a recommendation for the issuance of a liquor license held not entitled to withdraw after the license had been denied by the probate judge and a proceeding to compel the issuance of the license had been instituted. — Harlan v. State, Ala., 33 So. Rep 858.

102. LIFE INSURANCE— Beneficiaries. — Children born to an insured after issuance of policy payable to insured's children take as beneficiaries *pro rata* with children previously born. — Scull v. Ætna Life Ins. Co., N. Car., 43 S. E. Rep. 504.

103. MANDAMUS—Witness Fees.—The action of the trial judge in refusing to allow the account of witnesses in a criminal case, under Code Cr. Proc. art. 1093, cannot be reviewed or controlled by *mandamus*.— Murray v. Gillespie, Tex., 72 S. W. Rep. 160.

104. MARITIME LIENS—Admiralty Jurisdiction.—An unlawful interference with exclusive jurisdiction of admiralty cases vested in the courts of the United States is made by 2 Ballinger's Codes & St Wash. §§ 5953, 5954, creating a preferred lien on foreign ocean-going vessels for work done and materials furnished.—The Roanoke, U. S. S. C., 23 Sup. Ct. Rep. 491.

105. MASTER AND SERVANT—Assumed Risk.— The danger to a railroad section man in throwing ties from the door of a box car held an assumed risk.—St. Louis, S. W. Ry. Co. of Texas v. Austin, Tex., 72 S. W. Rep. 221.

106. MASTER AND SERVANT— Loop Hanging Over Cars. — A railroad company held negligent in permitting a pipe, with a loop hanging thereto, to project over the cars, so that a brakeman was jerked off a car.— Lindsay v. Norfolk & S. R. Co., N. Car., 43 S. E. Rep. 511.

107. MASTER AND SERVANT — Safe Place to Work. — Where a servant's injury is the result of the master's failure to furnish a safe place to work, it is not necessary to show gross negligence in order to recover.— Tradewater Coal Co. v. Johnson, Ky., 72 S. W. Rep. 274.

108. MECHANICS' LIEN—Notice of Lien.—In a suit to enforce mechanic's lien, though some of articles were furnished more than 90 days before notice, held proper to sustain lien for articles furnished within such time.— Wolfley v. Hughes, Ariz., 71 Pac. Rep. 951.

109. MECHANICS' LIEN— Rights of Parties — One who furnishes materials with privilege on a building may look to the amount due the contractor, and is not bound to look to the surety on the contractor's bond. — Simpson v. City of New Orleans, La., 33 So. Rep. 912.

110. MINES AND MINERALS — Extralateral Rights. — One of two coterminous mining proprietors is estopped to assert that, because of the non-parallelism of the end lines of the other's claim, it did not carry extralateral

rights defined by extending the common end line between the two surface locations.—Kennedy Min & Mill. Co. v. Argonaut Min. Co., U. S. S. C., 23 Sup. Ct. Rep. 501.

111. MINES AND MINERALS — Knowledge of Fraud.— A purchaser of a mining claim, with knowledge that two of the co owners had fraudulently deceived a third owner as to the price, held not liable to such third owner for his aliquot share of the secret profit made by the others.—Upton v. Weisling, Ariz., 71 Pac. Rep. 917.

112. MONOPOLIES — Intestate Commerce.— A corporation formed to aequire, hold, and vote a majority of the stock of each of two competing lines of interstate railroads, pursuant to a combination between stockholders, operates in direct restraint of interstate commerce, by destroying any motive for competition, and is illegal, as in violation of the anti-trust law, Act July 2, 1890, 26 Stat. 209, ch. 647, U. S. Comp. St. 1901. p. 3200. United States v. Northern Securities Co., U. S. C. C., D. Minn., 120 Fed. Rep 721.

113. MORTGAGES — Fees of Auctioneer. — Where the trustee sells the property under a power of sale, fees of an auctioneer employed must be paid by the trustee.—Duffy v. Smith, N. Car., 43 S. E. Rep. 501.

114. MORTGAGES—Foreclosure.—The mortgagee having exercised his option to declare all the notes due for default, and commenced foreclosure, the mortgagor cannot have it stopped by payment of what otherwise would have been due and costs to date. — Lincoln v. Corbett, Tex., 72 S. W. Rep. 224.

115. MORTGAGES—Homestead.— Where a mortgage on land held jointly was void as to one of the mortgagors, who occupied the land as a homestead, the mortgagees were entitled to subject the interest of the other to the payment of the debt.—Lester v. Johnson, Ala., 33 So. Rep. 880.

116. NAVIGABLE WATERS — State Authority.—The authority of the state to prohibt erection with permission of a structure in a navigable river within its limits held not superseded by River and Harbor Act March 3, 1899, ch. 425, § 10, 30, Stat. 1151, U. S. Comp. St. 1901, p. 3541.—Cummings v. City of Chicago, U. S. S. C., 23 Sup. Ct. Rep. 472.

117. PARENT AND CHILD—Action by Mother —Where, pending suit by father for injuries to minor child, the father dies and the mother is substituted, she cannot recover in her own right. — Kelly v. Pittsburg & B. Traction Co., Pa., 54 Alt. Rep. 482.

118. PARTITION — Demurrer. —In partition, where the title is in good faith placed in issue, the bill will be retained in order that the partition may be effected, if complainants should prevail at law in an assertion of their legal title. — Bearden v. Benner, U. S. C. C., S. D. Ga., 120 Fed. Rep. 690.

119. PARTNERSHIP — Mortgage. — A mortgage of partnership goods as security for a partnership debt is not invalid because signed by the partners individually, nor because of the addition of a seal to the individual names.— Davis v. Turner, U. S. C. C. of App., Fourth Circuit. 120 Fed. Rep. 605.

120. PATENTS—Infringement.—There is a presumption, from the grant of separate letters patent for two improvements on a prior art, that there is a substantial difference between the inventions. — Kokomo Fence Mach. Co. v. Kitselman, U. S. S. C., 23 Sup. Ct. Rep. 521.

121. PATENTS—Infringement. — The managing officers of a corporation, who actually participated in the adoption and use by the corporation of an infringing device, are liable for the infringement as joint tort-feasors.—Peters v. Union Biscuit Co., U. S. C. C., E. D. Mo., 120 Fed. Rep. 679.

122. PAYMENT—Forged Indorsement.—Where a debtor makes a note to his own order, and indorses it, and forges indorsement on it, it does not constitute payment on delivery to the creditor; but the latter is bound to restore the amount received from its negotiation.—Simpson v. City of New Orleans, La., 33 So. Rep. 912.

123. PERPETUITIES— Construction of Will.—Though a gift in a will to the lineal descendants of the testator's grandchildren, in case testator's daughter should die leaving children, is void under the rule against perpetuities, the gift to testator's other children in case the daughter died without children, held valid. — Stone v. Bradlee, Mass., 66 N. E. Rep. 708.

124. PLEADING—Sufficiency after Verdict.—Where an objection that an answer did not state a defense was taken by objection to evidence thereunder, it will be overruled, if the answer is sufficient after verdict. — Maugh v. Hornbeck, Mo., 72 S. W. Rep 153.

125. PRINCIPAL AND AGENT — Liability of Agent for Seller.—Agents who employ a real estate broker to find a purchaser for their principal's lands are not liable to the broker for commissions, having fully disclosed their principal.—Scottish American Mortg. Co. v. Davis, Tex., 72 S W. Rep. 211.

126 PRINCIPAL AND AGENT—Mortgage.—A credit man of a firm held authorized to receive a written notice to enter a partial payment on the margin of the record of a mortgage owned by the firm, so as to render the firm liable for the penalty prescribed by Code, § 1065.—Long Bros. v. Jennings, Ala., 33 So. Rep. 857.

127. PUBLIC LANDS— Confederate Scrip. — When confederate land scrip has been located, and the land surveyed, the scrip becomes merged in the land, though no patent has issued, and a deed to the land passes title. —Watts v Bruce, Tex., 72 S. W. Rep. 258.

128. PUBLIC LANDS— Decisions of Land Department.— Courts will not entertain an inquiry as to the extent of the investigation by the secretary of the interior and his knowledge of the points involved in his decision in a contest in the land department. — De Cambra v. Rogers. U. S. S. C., 23 Sup. Ct. Rep. 619.

129. PUBLIC LANDS — Removing Timber. — Under Act June 3, 1878, 20 Stat. 88, 1 Supp. Rev. St. 166. U. S. Comp. St. 1901, p. 1528, a mine owner held entitled to remove timber from mineral public lands for the purpose of roasting ores. — United States v. United Verde Copper Co , Ariz., 71 Pac. Rep. 954.

130. RAILROADS— Backing Train. — Backing section of train across street without warning, in violotion of ordinance, to couple with another section, held negligence. —Pittsburgh, C. C. & St. L. Ry. Co. v. McNeil, Ind., 66 N. E. Rep. 777.

131. RAILROADS—Killing Child on Track.— A recovery cannot be had against a railroad company for the killing of a child, who, while in a safe place with his sister in charge, runs across the track when the train is very near. —Southern Ry. Co. v. Eubanks, Ga., 43 S. E. Rep. 467.

132. RAILROADS— Mortgaged Property.— Property acquired by a railroad, and subdivided to be sold to its employees, held not covered by mortgage of its property used for the operation of its road.— Pardee v. Aldridge, U. S. S. C., 23 Sup Ct. Rep. 514.

133. RAILROADS— Necessary Precautions.— Persons in charge ot a train do not discharge their whole duty by giving the statutory warnings, where special circumstances call for additional warnings.— Ortolano v Morgan's L. & T. R. & S. S. Co., La., 33 So. Rep. 914.

134. RAILROADS — Proximate Cause of Death. — The presence of a mudhole in a street caused by a railroad's negligence held not the proximate cause of the death of plaintiff's decedent by being thrown from his buggy when his horse frightened by defendant's train, ran away —Neely v. Ft Worth & R G. Ry. Co., Tex , 72 S. W. Rep. 159.

135. RECEIVERS—Rights of Interested Parties.—Creditors and shareholders are entitled to an inventory, appraisement, and schedule of indebtedness of a corporation in the hands of a receiver.—*In re* Receivership of New Iberia Cotton Mill Co., La., 33 So. Rep. 903.

136. REMOVAL OF CAUSES— Separable Controversy.— An action to recover for a personal injury alleged to have resulted from the concurring negligence of two defendants, each of whom owed a separate duty of care

to the plaintiff, is not removable by one defendant, who is a non-resident of the state, on the ground that it involves a separable controversy.— Hoye v. Great Northern Ry. Co., U. S. C. C., D. Mont., 120 Fed. Rep. 712.

137. REWARDS — Construction of Offer. — A constable who arrests a person for misdemeanor held not entitled to recover a reward for the conviction of any one committing such misdemeanor. — Southwestern Telegraph & Telephone Co. v. Priest, Tex., 72 S. W. Rep. 241.

138. SALES—Cash on Delivery. — Where goods sold for cash were delivered, and the buyer refused to pay in cash, the seller held entitled to recover the goods. — Drake v. Scott, Ala., 33 So. Rep 873.

139. SALES—Implied — Warranty. —The seller of meal knowing that the purpose for which it is bought is to feed it to cattle, held, that there is an implied warranty that it is wholesome and fit for that purpose.— Houston Cotton Oil Co. v. Trammell, Tex., 72 S. W. Rep. 244.

140. SALES — Passing of Title. — Under a contract of bargain and sale, the goods sold become the property of the buyer as soon as the contract is concluded, whether the goods are delivered or not.—Warner v. Warner, Ind., 66 N. E. Rep. 760.

141. SALES.—Recording.—A bill of sale is not analogous to a chattel mortgage, and is not required to be recorded.—Stuart v. Mitchum, Ala., 33 So. Rep. 670.

142. SALES—Return of Goods.— A contract for the sale of a machine, providing it should be returned after four months if defective, the purchaser has a reasonable time after the four months to return it.— Dickey v. Winston Cigarette Mach. Co., Ga., 43 S. E. Rep. 493.

143. SALES—What Law Governs. — A contract for the sale of chattels, made and to be performed in Arkansas, where it was unenforceable, could not been forced in Texas.—Jones v. National Cotton Oil Co., Tex., 72 S. W. Rep. 248.

144. SEQUESTRATION—Resisting Officer. — In a trial for resisting an officer who was attempting to serve a writ or sequestration, the writ held valid, and therefore properly admitted in evidence. — Meador v. State, Tex., 72 S. W. Rep. 186.

145. SHIPPING—Seaman's Injuries.— A vessel is not liable *in rem* to one of the crew for damages for personal injuries through the negligent order of the master. — The Osceola, U. S. S. C., 28 Sup. Ct. Rep. 483.

146. STREET RAILROADS—Look and Listen. — In an action for injuries to a person struck by an electric car, plaintiff's failure to look before going on the track held contributory negligence, barring recovery. — Judge v. Elkins, Mass., 66 N. E. Rep. 708.

147. TAXATION — Over Valuation. — Where a board of equalization placed an over valuation on a person's property arbitrarily, for the purpose of oppression, equity will grant relief. — County of Cochise v. Copper Queen Consol. Min. Co., Ariz., 71 Pac. Rep. 946.

148. TAXATION — Tax Title. — If property be sold for taxes predicated on an assessment based on a tax title of record, a valid title may be acquired, although the tax title itself be void for latent defects. — Ashley Co. v. Bradford, La., 33 So. Rep. 634.

149. TELEGRAPHS AND TELEPHONES—Cutting Wires.— In order to constitute an offense under Pen. Code, art. 784, the wires cut by defendant must have been live ones used in the transmission of messages. — Southwestern Telegraph & Telephone Co. v. Priest, Tex., 72 S. W. Rep. 241.

150. TELEGRAPHS AND TELEPHONES — Failure to Promptly Deliver. — A telegram, "W's wife at point of death," signed by W, was sufficient to charge the telegraph company with notice of the necessity for immediate delivery. — Meadows v. Western Union Tel. Co., N. Car., 43 S. E. Rep. 512.

151. TELEGRAPHS AND TELEPHONES — Stipulation on Back of Blank. — Where the agent of a telegraph company writes a message on the company's blank, which the sender does not see, sign, or agree to, the stipulations on the back of such blank are not binding on the sender. — Western Union Tel. Co. v. Uvalde Nat. Bank, Tex., 72 S. W. Rep. 282.

152. TELEGRAPHS AND TELEPHONES — What Law Governs. — Where a telegram was delivered in Texas to be transmitted to a person in the Indian Territory, the rights of the parties and rule of damages are to be determined by the laws of Texas.—Western Union Tel. Co. v. Waller, Tex., 72 S. W. Rep. 264.

153. TENANCY IN COMMON — Conversion.—In an action for conversion, a defense that defendants were joint owners, and had taken possession for a legitimate purpose, cannot be availed of on demurrer to the complaint —Boley v. Allred, Utah, 71 Pac. Rep. 869.

154. TRIAL — Divorce. — Conduct of counsel in arguing divorce case for defendant, in exhibiting her child to jury, held improper. — Hopkins v. Hopkins, N. Car., 43 S. E. Rep. 506.

155. TRIAL — Irregularity of Introducing Evidence.—A defendant cannot take advantage of his own irregularity in introducing evidence in defense, on the cross-examination of complainants' witnesses, to exclude evidence taken by complainants in rebuttal. — Cimiotti Unhairing Co. v. American Fur Refining Co., U. S. C. C., D. N. J., 120 Fed Rep. 672.

156. TRUSTS — Statutes of Limitations.—The statutes of limitations of three and six years are not applicable to a proceeding to enforce a constructive trust in lands.— Northwestern Land Assn. v. Grady, Ala., 33 So. Rep. 874.

157. UNITED STATES — Marshal's Per Diem Fee. — The *per diem* fee for attendance of a United States marshal at court is allowable, where it has been open for business, though none may have been transacted. — United States v. Nix., U. S. S. C., 23 Sup. Ct. Rep. 495.

158. VENDOR AND PURCHASER — Broker's Commission —Real estate broker, sued for commissions, held not negligent in notifying vendor of purchaser's acceptance, so as to preclude recovery — Scottish American Mortg. Co. v. Davis, Tex., 72 S. W. Rep. 217.

159. VENDOR AND PURCHASER—Fraudulent Representations. — A vendor, sued for fraudulent representations inducing the vendee to purchase, held not entitled to defend by showing negligence on the vendee's part.— —Leicher v. Keeney, Mo., 72 S. W. Rep. 145.

160. VENDOR AND PURCHASER — Matter of Description —A recital of the number of acres in a tract described by metes and bounds in a bond for title held mere matter of description. — Pearson v. Heard, Ala., 33 So. Rep. 678.

161. WILLS — Construction. — The words "surviving children" of a testator, as used in a will, held to mean the childern surviving at the time of the testator's death. —Stone v. Bradlee, Mass., 66 N. E. Rep 708.

162. WILLS—Revendication. — Persons claiming as testamentary heirs under a lost or destroyed will, have no standing to revendicate the property claimed, in the absence of an averment that the execution of the will has been ordered by a competent court.—Sprowl v. Lockett, La., 33 So. Rep. 911

163. WITNESSES — Discrediting Witness. — Plaintiff's cross-examination of witness discrediting plaintiff's witness in divorce held improperly excluded.—Hopkins v. Hopkins, N. Car., 43 S. E. Rep. 506.

164. WITNESSES — Evidence. — In a prosecution for homicide, glasses used by a police officer held inadmissible to prove that witness had defective vision. — Commonwealth v. Carter, Mass., 66 N. E. Rep. 716.

165. WITNESSES — Evidence. — Evidence that witness was in the saloon or "joint" business is inadmissible to discredit him. — Shaefer v. Missouri Pac. Ry. Co., Mo., 72 S. W. Rep. 154.

166. WITNESSES—Impeachment.—It was competent for defendant to show that a witness, who had testified that defendant did the killing, had stated on the examining trial that he did not know who did the killing. — Cecil v. State, Tex., 72 S. W. Rep. 197.